

P R E C E D E N T S

O F

P R O C E E D I N G S

I N T H E

H O U S E O F C O M M O N S.

V O L. I.

REGISTERED

THE FIRST VOLUME OF THE
A COLLECTION OF CASES OF PARLIAMENT

FROM THE EARLIEST RECORDS TO THE PRESENT TIME

THE FIRST AND SECOND VOLUMES

AND THE DATE OF PRINTING



K. Hatwell (J.)

Advertisement to the Reader.

THE First Volume of this Work, under the Title of
“ A Collection of Cases of Privilege of Parliament,
from the earliest Records to the Year 1628,” was published in
the Year 1776, and the Second Volume in the Year 1781, and
are both here re-printed, with Additions.

VOL. I.

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P R E C E D E N T S

O F

P R O C E E D I N G S

I N T H E

H O U S E O F C O M M O N S ;

W I T H O B S E R V A T I O N S .

V O L . I .

R E L A T I N G T O P R I V I L E G E O F P A R L I A M E N T .

T H E S E C O N D E D I T I O N .

L O N D O N :

P R I N T E D B Y H . H U G H S ,
F O R J . D O D S L E Y , I N P A L L - M A L L .

M . D C C . L X X X V .

THE GARDEN

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TO
THE RIGHT HONOURABLE
JEREMIAH DYSON,
COFFERER TO HIS MAJESTY'S HOUSEHOLD,
AND
ONE OF HIS MAJESTY'S
MOST HONOURABLE PRIVY COUNCIL,
THE FOLLOWING COLLECTION OF
CASES OF PRIVILEGE OF PARLIAMENT,
IS,
WITH THE MOST SINCERE RESPECT
AND GRATITUDE,
INSCRIBED,
BY HIS FAITHFUL
FRIEND AND SERVANT,
JOHN HATSELL.

TO

THE HONORABLE THE SECRETARY OF THE INTERIOR

WASHINGTON, D. C.

AND

THE HONORABLE THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

THE FOLLOWING CASES OF

LANDS BELONGING TO THE UNITED STATES

ARE HEREBY

AND

BY

THE SECRETARY OF THE ARMY

AND

P R E F A C E.

THE following Cases are part of a larger Collection, extracted from the Journals of the House of Commons, and other Parliamentary Records.

The Compiler of these has always been of opinion that the easiest method of conveying to the Public the very useful information contained in those voluminous Collections, is, to select particular heads or titles; and, having brought together every thing that has any reference to any of these heads, to digest the whole in a chronological order, and to publish it in a separate volume. He has, upon this principle, ventured to send forth this Work, relating to the Privilege of Members of the House of Commons, only by way of specimen, and as an example for those who may adopt this idea, and who may have more leisure to pursue so laborious an undertaking.

The Reader will not suppose, that the Observations upon the several Cases are made with a view of declaring what the Law of Privilege is, in the instances to which those Observations refer: they are designed merely to draw the attention of the Reader to particular points, and, in some degree, to assist him in forming his own opinion upon that question.

This Work ought therefore to be considered only in the light of an Index, or a Chronological Abridgment of the Cases to be found upon this subject. The Publisher cannot but suppose, that, notwithstanding his most accurate search, many instances must have escaped his observation; he has however endeavoured, with great diligence, to examine every Work, which he thought might contain any thing relating to this matter; and pretends to no other merit, than the having faithfully extracted, and published, what appeared to him essential for the information of the Reader.

Perhaps some apology is necessary, for his having presumed, without leave or any previous notice, to inscribe this Collection to a Person, whose universal knowledge upon all subjects, which relate to the History of Parliament, will render this, and every work of this sort,

sort, to him unnecessary: But the Publisher could not prevail upon himself to omit such an opportunity of expressing to that Gentleman, and to the World, the very grateful sense he entertains of that kindness and generosity, which first placed him, even without any application on his part, in a situation, that has made it his duty to apply himself more particularly to the examination of the Journals of the House of Commons, and to studies of a similar nature.

The public character of that Gentleman, his comprehensive knowledge, his acuteness of understanding, and inflexible integrity, are sufficiently known and acknowledged by all the world: but it is only within the circle of a small acquaintance, that he is admired as a man of polite learning and erudition, a most excellent father, and a most valuable friend; they only who have the pleasure and advantage to know him intimately, know, that the warmth and benevolence of his heart, are equal to the clearness and sagacity of his head.

A very ill state of health has, at present, unfortunately withdrawn this Gentleman from the service of the Public; but all who remember his abilities in Parliament,

liament, will lament the loss of that information, which his knowledge of the History, and of the Laws and Constitution of this Country, enabled him to give, and which he was at all times so ready, in private as well as public, to communicate.

Cotton-Garden,
April 5, 1776.

C O N-

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PREFACE

PRECEDENTS

OF

PROCEEDINGS

IN THE

HOUSE OF COMMONS,

RELATING TO

PRIVILEGE OF PARLIAMENT.

CHAP. I.

FROM THE EARLIEST RECORDS TO THE END OF THE
REIGN OF HENRY VIII.

AS it is an essential part of the constitution of every court of judicature, and absolutely necessary for the due execution of its powers, that persons resorting to such courts, whether as judges or as parties, should be intitled to certain Privileges to secure them from molestation during their attendance; it is more peculiarly essential to the Court of Parliament, the first and highest court in this kingdom, that the Members, who compose it, should not be prevented by trifling interruptions from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call, not so

B

immediately

immediately necessary for the great services of the nation: it has been therefore, upon these principles, always claimed and allowed, that the Members of both Houses should be, during their attendance in Parliament, exempted from several duties, and not considered as liable to some legal processes, to which other citizens, not intrusted with this most valuable franchise, are by law obliged to pay obedience.

What is the extent of these Privileges, and how long their duration, has been always uncertain, and frequently matter of dispute; nor are these points settled even at present, except in those particular instances where Acts of Parliament, or the Resolutions of either House of Parliament, have ascertained and defined them. The only method therefore, of knowing what are the Privileges of Members of the House of Commons, is to consult the Records of that House, and to search into the history of Parliament for those Cases, in which a Claim of Privilege has been made, and to examine whether it has been admitted or refused. For this purpose, as the Journals of the House of Commons are preserved no further back than from the first year of the reign of Edward VI, and are indeed but concise and imperfect till the time of James I, I have found it necessary to look into the Rolls of Parliament, and into other Records; and having extracted every Case that has occurred to me in this search, I have here stated them at length, with such observations as have suggested themselves to me on the circumstances of the particular Case.

1. The first is that cited by Sir Edward Coke in the Fourth Institute, page 24, under the title "Privilege of Parliament;" The Case of the Master of the Temple in the

the eighteenth year of Edward I, and is entered in the Roll of Petitions in Parliament, 18 Edward I*.

‘ Mag'r Militie Templi petit quod dare possit Episcopo
‘ Menevenf' xxx s. redditus annui, & arrerag' x annorum,
‘ pro quadam domo in Lond' in qua non potest distrin-
‘ gere nisi tempore Parliamenti; petit quod habeat licen-
‘ tiam distringendi tempore Parliamenti.

‘ *Resp.* Non videtur onestum qd Rex concedat quod
‘ illi de Consilio suo distringantur tempore Parliamenti, Set
‘ alio tempore distringat per hostia et fenestras, prout moris
‘ est.

“ Whereby,” says Sir Edward Coke, “ it appeareth that a
“ Member of the Parliament shall have Privilege of Parlia-
“ ment, not only for his servants, as is aforesaid, but for
“ his horses, &c. or other goods distrainable.”

2. The next Case is also cited in the Fourth Institute from 18 Edward I, fol. 1. It is quoted at length in Pryn's Fourth Register, p. 820, and in Ryley's Placita Parliamen- taria, p. 6, and is as follows †:

‘ Prior Ecclesie sancte Trinitatis London' & Bogo de Clare
‘ attach' fuerunt ad respondend' Domino Regi, Petro de Chañet
‘ Senescallo Domini Regis, Waltero de Fanecurt Marefcallo

* It is remarkable that Pryn, in the Fourth part of his Register of Writs, p. 817, and 1188, twice asserts, that after the most accurate search no such petition is to be found; however, in his Animadversions on the Fourth Institute, p. 18, he admits,

that at last he has found it in the Treasury of the King's Receipt in the Exchequer.

† See Rotul. de Ann. 18 & 19 Ed. I. p. 17.

* Domini Regis, Edmundo Comiti Cornub' & Abbati Westm'
 * de hoc, quod cum idem Comes, ad mandatum Domini Re-
 * gis ad istud Parliamentum suum London' venisset, & per
 * medium Majoris Aule Westm' versus Consilium Domini
 * Regis transisset, " ubi quilibet de regno & pace Domini
 * Regis licite & pacifice venire, & negotia sua prosequi
 * debet, absque hoc qd aliquas citationes vel summoni-
 * tiones ibidem admittat," predictus Prior, ad procuracionem
 * ipsius Bogonis, die Veneris proxima ante festum Purifica-
 * tionis beate Marie, hoc anno, predictum Comitem in pre-
 * dicta Aula citavit qd compareret ad certos diem & locum
 * coram Archiepiscopo Cantuar' super sibi objiciend' respons'
 * in contemptum Domini Regis manifestum, & dedecus suum
 * decem mille libr' & in lesionem libertatis Ecclesie predicti
 * Abbatis, concessa per Curiam Romanam, cum predictus
 * Locus omnino sit exemptus a jurisdictione Archiepiscopo-
 * rum, seu Episcoporum quorumcunque, per Libertates sibi
 * & Ecclesie sue Westm' concessas, et ad dampnum ipsius
 * Abbatis mille librarum, et in prejudicium officii predictorum
 * Senescalli & Marescalli manifestum, & dampnum non mo-
 * dicum, cum ad ipsorum officium, & non ad alium, sum-
 * monitiones & attachiamenta infra Palacium Domini Regis
 * pertineat faciend'; et etiam ad dampnum predicti Comitis
 * quinque Mille libr'; et inde producant sectam, &c.

* Et Prior & Bogo ven' & Prior bene cognoscit, quod
 * ipse citavit, predictis die & loco, predictum Comitem, ut
 * predictum est; et similiter predictus Bogo bene cognoscit,
 * quod ipse fecit citare predictum, Comitem, ut predictum
 * est; set dicit quod ipse omnino ignoravit quod predictus
 * Locus fuit exemptus, et quod non intellexit aliquem con-
 * temptum Domino Regi, seu aliquod Prejudicium ejus Mi-
 * nistris, per citationem illam fecisse; et omnino ponit se

• in grātiā, misericordiā, & voluntatē Domini Regis
• alto & basso.

• Et quia predicti Prior & Bogo cognoscunt predictam cita-
• tionem predictis die & loco per ipsos fuisse factam; et que
• manifeste facta fuit in contemptum Domini Regis; Con-
• sideratum est, quod predicti Prior & Bogo mandentur Turri
• London' & ibidem custodiantur ad voluntatem Domini Re-
• gis &c. Et quoad predictos Com' & Abbatem, datus est
• dies eis die Veneris in crastino Purificationis beate Marie &c.

• Postea predictus Bogo invenit pleg' subscriptos, ad satisf-
• faciend' Domino Regi de predicta Transgressionē ante re-
• cessum suum de Westm' de instanti Parlamento, alioquin
• quod ipsi restituent Corpus ejus Turri London' in recessu
• Domini Regis; scilicet, Johannem de Eyuille, Henricum
• Hose &c. &c. qui ipsum plegiaverunt in forma predicta.

• Et predictus Prior invenit pleg' subscriptos, scilicet,
• Robertum de Melkele &c. &c. qui ipsum Priorem pleg'
• sub eadem forma qua predicti Johannes de Eyuille, et alii
• superius, predictum Bogonem pleg'. Postea venit predictus
• Bogo, & finem fecit Domino Regi pro predicta Transgres-
• sione per * mille marcas, et recipitur per pleg', &c.

• Et quoad predictum Com' postea venit predictus Bogo,
• & vad' eidem Comiti mille libr' pro Transgr' sibi facta; et
• idem Comes ad instantiam Episcopi Dunelm', Episcopi
• Elienf', & aliorum de Consilio ipsius Domini Regis, remisit
• eidem Bogoni pred' mille libr' usque ad centum libr' &c.

• Et Sciend' quod Plegii de predicto Fine admittuntur
• coram Thes' ad Scaccarium, per preceptum Domini Regis;
• et predictus Prior mittitur ibidem ad faciend' secundum
• quod Thes' ei dicet ex parte Domini Regis &c.

• (Dua) in Ryley's Placita Parliamentaria.

This Record does not appear to me to warrant the conclusion Sir Edward Coke draws from it, viz. "That the same Privilege holdeth in case of Subpœnæ, or other process out of any Court of Equity." The contempt in this Case seems to have been not so much in breach of the Privilege of Parliament, as that the citation was served in the King's palace, and in a privileged place belonging to the Abbot of Westminster, contrary to the rights of the King's servants, the Lord Steward and Lord Marshal, and of the said Abbot. And Pryn's observations upon it in the Fourth Register, p. 822, are in my opinion sensible and well founded*.

3. The third precedent cited by Sir Edward Coke, is that of Writs of Superfedeas issued to the Justices of Assize in favour of Members of Parliament. The writs are at length in the Fourth Register, p. 834, and in the Appendix to Ryley's *Placita Parliamentaria*, p. 551, and are as follows†:

‘ Claus. 8 Ed. II. Memb. 22. dorso.

‘ Rex dilectis & fidelibus suis Henrico Spigurnel, &c.
 ‘ Justiciariis ad Assisas, Juratas, et Certificaciones, in Comitatibus Kancie, Surr’, & Suffex, Salutem.—Cum nuper
 ‘ Parliamentum nostrum, ob certa & ardua negocia Nos
 ‘ et statum Regni nostri contingencia, apud Westm’ die

* It has been very properly suggested to me, that in differing from so great an authority as Sir Edward Coke, one should speak with diffidence; especially in matters in themselves obscure, on account of their remoteness from the present times.—I have always endeavoured to do so.

There is a very similar case quoted in

the Fourth Register, p. 1189, of a Citation served in the 8th year of Edward II. on Joan de Barro, Countess of Warren, at that time resident in the King's palace. The Record at large, and Pryn's observations upon it, are worth consulting.

† See Appendix ad Rotulos Parliamenti, temp. Ed. II. p. 449.

‘ Lune

‘ Lune in octabis Sancti Hillarii proximo futuri, tenendum
 ‘ fecerimus summoneri; ac Prelatis, Comitibus, Baronibus,
 ‘ & aliis quampluribus fidelibus nostris” per Brevia nostra spe-
 ‘ cialiter mandaverimus, quod, omnibus aliis pretermis-
 ‘ dictis die & loco in Parlamento predicto personaliter inter-
 ‘ sint, Nobiscum & aliis de Consilio nostro tunc ibidem ex-
 ‘ istentibus super dictis negociis tractaturi, et suum Consilium
 ‘ impensuri: Nos indemnitati Prelatorum, Comitum, Ba-
 ‘ ronum, & aliorum fidelium nostrorum, qui ad dictum Par-
 ‘ liamentum taliter ad mandatum nostrum sunt venturi, vo-
 ‘ lentes prospicere, ut tenemur, ne per eorum absenciam,
 ‘ dum sic in dicto Parlamento steterint, exheredacionem ali-
 ‘ quam sustineant, aliquam vel incurrant, vobis manda-
 ‘ mus, quod captionibus Assisarum, Juratarum, & Certifica-
 ‘ tionum aliquem Prelatorum, Comitum, Baronum, “ & alio-
 ‘ rum fidelium nostrorum,” quem vobis constiterit de man-
 ‘ dato nostro predicto ad dictum Parliamentum venire, tan-
 ‘ gentium supersedeatis, durante Parlamento supradicto.
 ‘ Teste Rege, apud Langele, xv^o die Januarii.

‘ Eodem modo mandatum est Justiciariis ad Assisas, Jura-
 ‘ tas, & Certificaciones, in singulis Comitibus Anglie ca-
 ‘ piendas assignatis.

‘ Ibidem, m. 33. dorso.

‘ Rex dilectis & fidelibus suis Willielmo de Ormesby, &
 ‘ Roberto de Maddingle, Justiciariis ad Assisas in Comita-
 ‘ tibus Norff’ & Suff’ capiendas assignatis, Salutem. In-
 ‘ demnitati illorum, qui ad presens Parliamentum nostrum
 ‘ usque Eborum ad summonicionem nostram personaliter
 ‘ venerunt, & similiter aliorum qui ibidem per preceptum
 ‘ nostrum moram faciunt, prospicere volentes, presertim cum
 ‘ absentes.

absentes jura sua defendere nequeant ut presentes; vobis mandamus, quod ad aliquas Assisas illos qui ad Parliamentum nostrum predictum ad summonicionem nostram venerunt, ac alios qui ibidem per preceptum nostrum ut premittitur moram trahunt, vel eorum aliquem, tangentes capiendas, eodem Parlamento durante, minime procedatis. Teste Rege, apud Eborum, xii^a die Septembris.

Eodem modo mandatum est Lamberto de Trykyngham, & Johanni Chaynel, Justiciariis ad Assisas in Comitatu Lincolnie capiendas assignatis, de verbo ad verbum. Teste ut supra.

Per ipsum Regem & Consilium.

It is very remarkable what Mr. Prynne observes, that these two precedents of "General" Writs of Superfedeas are singular, there being none of this kind extant on record before or since this 8th year of Edward II.—And they are the more extraordinary, as it is 150 years before the House of Commons appears to have claimed the Privilege, that their Members should not be impleaded during the sitting of Parliament*.

These writs were certainly issued upon those very rational principles, to which I have before alluded, "That the attendance on Parliament ought not to be interrupted by the process of any inferior Court in matters of Civil Jurisdiction;" a maxim that must have been coeval with the existence of Parliaments, and which must by some method or other have been always adhered to and enforced.

* How far the distinction made in the other real and personal action, is true, Fourth Register, p. 836, (quod vide) between Captions, sworn Assizes, and any I leave to abler lawyers than I am to determine.

4. The next and last Case produced by Sir Edward Coke, is thus cited from the Patent Rolls in the Tower, of 10 Edward III, Mem. 23, in the Fourth Register, p. 829.

‘ Rex omnibus Ballivis et Fidelibus suis ad quos &c.
 ‘ Salutem. Sciatis, quod cum Curie nostrae, in quibus ne-
 ‘ gotia Regni nostri deducuntur ubiq; adeo liberae sint et
 ‘ exemptae, et a tempore quo non extat memoria liberae et
 ‘ exemptae fuerint, quod nec aliqua Forum Ecclesiasticum
 ‘ concernentia in eisdem Curis nostris fieri seu exequi, nec
 ‘ aliqui easdem Curias nostras ad aliqua Forum Ecclesi-
 ‘ asticum contingentia faciendum vel exequendum ingredi de-
 ‘ beant vel consueverint aliquibus temporibus retroactis: ac
 ‘ Magister Henricus de Harewedon, Clericus, Edmundus de
 ‘ Lewkenore, et Johannes de Wedlingburgh, de eo quod
 ‘ ipsi nuper in Cancellaria nostra in praesentia venerabilis
 ‘ Patris J. Cantuariensis Archiepiscopi Cancellarii nostri
 ‘ quasdam citationes sive monitiones dilecto Clerico nostro
 ‘ Magistro Johanni de Thoresby, nec non, provocationes,
 ‘ appellationes et instrumenta publica super citationibus
 ‘ seu monitionibus praedictis, in nostri contemptum et co-
 ‘ ronae nostrae, ac Regiae dignitatis nostrae praerudicium, et
 ‘ contra libertatem et exemptionem praedictas fecerunt, per
 ‘ inquisitionem in quam se inde in Curia nostra coram dicto
 ‘ Cancellario nostro et aliis de Concilio nostro posuerunt,
 ‘ convicti fuissent, et ea occasione prisonae nostrae manci-
 ‘ pati, in eadem ad voluntatem nostram moraturi: Nos
 ‘ de gratia nostra speciali, ad requisitionem Philippae Re-
 ‘ ginae Angliae Consortis nostrae charissimae, perdonavimus
 ‘ eisdem Henrico, Edmundo, et Johanni imprisonamentum
 ‘ praedictum, ita tamen quod nobis satisfaciant de redemp-
 ‘ tione sua occasione praemissorum, et quod super citationi-
 ‘ bus,

bus, monitionibus, provocationibus, appellationibus, seu
 instrumentis prædictis in dicta Cancellaria nostra sic factis
 processum aliquem non faciant, nec quicquam, quod in
 nostrî vel juris coronæ nostræ præjudicium cedere possit,
 attemptent vel attemptari faciant de cætero quovis-modo.
 In cujus &c. Teste Rege apud Turrin London. 15 die
 Aprilis.
 Per ipsum Regem.

To which there is this additional memorandum subjoined
 in the Patent Roll:

Et Mem^{um} quod Radulphus de Upton &c. &c. vene-
 runt in Cancellariam Regis apud Novum Templum Lon-
 don. 21 die Aprilis anno prædicto, et manuceperunt, viz.
 quilibet eorum corpus pro corpore pro prædicto, Ma-
 gistro Henrico de satisfaciendo Regi de redemptione præ-
 dicta quandoqunque Regi placuerit. Et quod idem Hen-
 ricus processum aliquem non faciat super citationibus, pro-
 vocationibus, appellationibus, seu instrumentis prædictis,
 nec quicquam, quod in juris coronæ Regis præjudicium
 cedere poterit, attemptabit, vel attemptari faciet sub peri-
 culo quod incumbit.

It will certainly be very difficult for the most attentive
 reader of this Case to guess in what manner it is the least
 applicable to the Privileges of either House of Parliament:
 The only crime of Henry de Harewedon, and the others,
 seems to have been serving Ecclesiastical Process in the
 Court of Chancery, in breach of the known liberties and
 exemptions of the King's Courts. Sir Edward Coke how-
 ever, in order to bring it within the subject of which he is
 treating,

treating, subjoins a note in the margin*, "That this Thoresby was then Clerk of the Parliament," but does not refer to any history or record to prove the truth of this anecdote. Prynne, in the Fourth Register, p. 830, positively denies it; but even admitting that he was so, the punishment inflicted upon the offenders does not seem to have been for any breach of the Privilege of Parliament, which is not so much as hinted at, but for their open contempt and violation of the franchises of the Court of Chancery.

These are all the Cases which Sir Edward Coke produces under the title of "Privilege of Parliament." What authority they will have, or how far they are applicable, to prove the existence of any Privilege now claimed by Members of the House of Commons, must be left to the judgment of the reader. It would be very unbecoming in me to pretend to offer my opinion against that of this great Oracle of the Law; I can therefore only refer to Prynne's Animadversions on the Fourth Institute, and to the Fourth Part of the Register of Writs, where there will be found a very laboured collection of arguments on the other side of the question.

5. There is a Record cited in Prynne's Animadversions, p. 20, relative to this subject, and prior in point of time to the last Case of Sir Edward Coke; it is an original Writ of the ninth Year of Edward II. found in the White Tower chapel; and is as follows:

* Qq. Whether this Marginal Note is Sir Edward Coke's or some subsequent Editor's?

Edwardus Dei gratia Rex Angliæ &c. Vice Comiti Eborum, Salutem. Pone per vadium & salvos pleg. Walterum le Flemmyng, &c. &c. quod sint coram nobis a die Paschæ in tres septimanas ubicunque tunc fuerimus in Anglia, ostens. quare, cum ad Parliamenta, in quibus tam nostri quam regni nostri negotia debent pertractari, Prælatos, Comites, Barones, & alios tam Clericos quam Laicos, per quorum industriam super negotio hujusmodi consilium salubrius poterit adhiberi, ad mandata nostra vocatos et comparentes, “in veniendo ad eadem Parliamenta, ibidem morando, et exinde redeundo,” ab omnimodis injuriis, oppressionibus et gravaminibus nos oportet protegere et tueri; præfati Walterus &c. &c. dilectum nobis in Christo Priorem de Malton, nuper de Parlamento nostro quod apud Lincoln in quindena S. Hillarii prox. præterita summoneri fec. ad propria redeuntem, in civitate nostra Eborum per equos et harnesia sua, quo minus idem Prior quasdam cartas et quædam munimenta, hæreditatem Willielmi de Vesci jam defuncti contingentia, et in custodia ejusdem Prioris apud Malton residentia, prout sibi per nos in Parlamento prædicto plenius fuerat injunctum, deferre potuisset, arrestarunt et sub arresto diu detinuerunt, in nostrum contemptum, et coronæ nostræ prejudicium, ac dampnum ipsius Prioris ducentas libr. et contra pacem nostram. Et habeas ibi nomina pleg. et hoc breve. Teste Meipso apud Lincoln 22 die Feb. anno reg. nost. 9^{na}.
“Per Consilium.”

Mr. Prynne adds, that he never was able to find what Judgment was given for the King or Prior upon this Writ.

6. In the Parliament of the fifth year of Henry IV. there was a petition from the Commons to the King, translated by Elfyng^{*}, but thus entered at large on the Parliament Roll †;

Item priont les Communes, q̄ come “solone la custume de Roialme,” Seigneurs, Chivalers, Citezeins & Burgeises, a voz Parlementz de v̄re commandement “venantz, illeques demurrantz, & a lour propres retournantz,” & “lour hommes & servantz ove eux en le dit “Parlement” desoutz v̄re especiale protection & defense, ne devoient pur ascun dette, accompt, trespas, ou autre contract q̄conque, estre arestuz, ou en ascun manere empri- sonez en le mesme temps; & ja soit ensy q̄ sovent foitz plusours de autiels hommes venantz a voz Parlementz, & autres lour hommes & servantz durant le dit Parlement, ont este arestuz par ceux q’ ont eu plein conifance q̄ ceux ensy arestuz furent de Parlement, ou des hommes & servantz d’iceux de Parlement, come est dit; en contempt de vous, grande damage de partie, “& retardacion des besoignes de vos Parlementz:” Pleise establier, q̄ si ascun desore en avaunt face arester ascun tiel homme venant al Parlement, come est dit, ou ascun de lour hommes & servantz en le dit Parlement, ove eux demurantz durant le dit Parlement, ou ascun chose attempte enconter la custume, face fyn et ranceon a vous, & rende al partie greve ses damages a treble.

‘*Responsio.* Y. ad sufficient remede en le cas.’

What this sufficient remedy was does not appear; Elfyng, arguing from the Case of the Earl of Cornwall mentioned

* Page 186.

† Page 541.

before, N°. 2, supposes that as the law then stood, “ the
“ party contemning the Privilege of Parliament was to be
“ committed to prison, to make fine and ransom to the
“ King, to render to the party grieved such damages as the
“ Lords of the Parliament shall award; and to answer the
“ King’s Steward and Marshal, if the contempt be within
“ the Verge, for the wrong done to them; which (says he)
“ is a greater punishment than the Commons required; and
“ happily they knew it not; but this being an antient cus-
“ tom, and due by prescription, the Lords thought it more
“ honourable to retain it than to enact a new law,” p. 187.

This interpretation of the answer appears to me extra-ordinary, and not so probable as what Prynne supposes in the Fourth Register, p. 725, “ That the King refused to grant
“ this their petition or pass it into a future standing law,
“ because he reputed the penalties in it against such as ar-
“ rested any Members or their Servants, by legal process,
“ though knowing them to be such ‘ by fine and ransom to
“ himself, and treble damages to the party,’ to be overharsh
“ and penal, against such who had just cause of action
“ against them, and a means to obstruct the free course of
“ the common law and justice; their prevention of arrests or
“ enlargement by a Writ of Privilege or Habeas Corpus,
“ which the law allowed them in such cases, (if not in exe-
“ cution) being a sufficient remedy, whereby the prosecutor
“ lost the benefit of his arrest, and was put to the charge of
“ new process without any arrest, during the session.”

I do not however agree with Mr. Prynne in supposing that this petition was grounded on a violent assault which was made, during the sitting of this Parliament, on one Richard Chedder,

Chedder, a menial servant attending upon Sir Thomas Brooke, one of the Knights for the county of Somerset; the subject-matter of it is totally different, and complains only of Arrests or Imprisonment by virtue of legal process in Actions of Debt, Account, Trespass, or other Contract; besides in Chedder's Case there was a particular petition of the Commons in his behalf, which states a very different offence, and prays a very different remedy.

7. It is as follows:

Rot. Parl. 5. Hen. IV. N°. 78 *.

Item prient les Communes, q̄ come toutz les Seigneurs, Chivalers, Citezeins, & Burgeis, ove leur servantz venantz a Parlement, p̄ brief le Roy, “ en venant, demurant, & retournant ” ils sont soutez vostre protection Roiall, & plusieurs meschiefs & diseases sovent aveignent as ditz Seigneurs, Chivalers, Citeins, Burgeys, & leur servantz meynales, en temps avan dit, come p̄ murdre, maheymes, & bateries p̄ gentz gifantz en agaite, ou autrement, dount due remedie n'est unqore purveu; & noient en espal en cest present Parlement de le horrible baterie & malfait q'est fait a Richard Cheddre, Esquier, q̄ fust venuz a y cest present Parlement ovesq̄ Sire Thomas Brook, Chivaler, un des Chivalers pur le Courte de Somers' & meynall' ove luy, par Johan. Salage, autrement appelle Savage, dount l'avant dit Richard Cheddre est emblemiz et mahemiz, & tout sur le peril de mort: qe pleise ordeiner remedie sur ceste matire, suffisant remedie, “ & pur autres tieux cafes semblables ” ensi, q̄ le punissement de luy purra doner ensample &

"terrouz a autres d'ensy malefaire en temps avenir; C'est
 "assaver, q̄ si ascune tue ou murdre ascun q' est venuz ency
 "soutz v̄re protection al Parlement, q'il soit ajugge Treson,
 "& si ascun maheyme ou disfigure ascun tiel ensy venuz
 "soutz protection, q'il p̄de sa mayn. Et si aucun naufre ou
 "bate ascun de tieux ensy venuz, q'il eit la prisone d'un an,
 "& fyn & raunson a Roy: Et q̄ vous pleise de v̄re grace
 "especial desore en avant de vous abstinere des ch̄res de pardon
 "en tiel cas, saunz ceo q̄ les parties soient pleinement ac-
 "cordez.

"Responso. Pur ceo q̄ le fait feust fait deinz le temps de
 "cest Parlement, soit fait proclamation la ou le dit fait se fist,
 "q̄ Johan. Sallage deinz escript appierge & soi rende en Bank
 "le Roy deinz un quarter d'un an apres la proclamation faite.
 "Et s'il ne le face, soit le dit Johan. atteint de le fait suifdit,
 "& paie au partie endamgee ses damages, au double, a
 "taxer p̄ discretion des Juges du dit Bank pur le temps
 "esteantz, ou p̄ Enquest, s'il emboigne, & face fyn &
 "raunceon a volonte du Roy. "Et semblablement soit fait
 "en temps a vener en cas semblable."

The conclusion of this answer with respect to "similar
 "Cases in time to come," certainly made this a general law,
 and so it is considered by all the writers who have men-
 tioned this Case, and is accordingly entered on the Statute
 Roll, 5 Hen. IV. ch. 6, and continues a subsisting law at
 this day. No notice is taken in the answer, of the very
 rigorous punishments prayed for by the Commons against such
 as make the assault, or maim, &c. it being thought perhaps,
 as in the former Case, that the present remedy was sufficient,
 and therefore no new punishment is created by this law for
 these offences; it only gives a remedy to compel the person
 5 complained

complained of to appear, then to be dealt with according to the law as it then stood. The title therefore of this act, as it is in the Statute Book, "The Penalty of making an Assault upon any Servant of any Knight in Parliament," is by no means just; as the statute is only in the nature of a proclamation to compel the offender to appear, and declares what shall be the penalty in case of non-appearance. This construction of the statute is confirmed not only by the opinion of Elsyng, p. 191, who says, "this law was made to provide for him that could not be apprehended after the fact done," but by its being found necessary, within a very few years after, to make another Act of Parliament "for the punishment of those that make assault upon any that come to the Parliament," 11th Henry VI. chap. 11; an Act, which comprehends both these points, and which, after reciting, word for word, the penalties inflicted by the statute of 5th Henry IV. chap. 6, upon such offenders as should not appear, goes on and declares, "That if he do come and be found guilty by Inquest, by Examination, or otherwise, of such Affray or Assault, then he shall pay to the party so grieved his double damages found by the Inquest, or to be taxed by the discretion of the said Justices, and make fine and ransom at the King's will." Mr. Elsyng says, "Constat that the said John Sallage did yield himself according to the proclamation;" but I don't find that it is any where recorded what punishment he underwent, and indeed by the act of 11th Henry VI. following so soon after, it looks very much as if, at this period, no particular penalties were ascertained by the law for this and similar offences.

8. The next Case in point of time is that of Larke, in the eighth year of Henry VI. which is thus entered on the Roll:

D

' Rot.

• Rot. Parl. 8 Hen. VI. N°. 57*.

• Priount les Communes q̄ la ou un William Larke, Ser-
 • vaunt a William Milrede, “ venant al v̄re Court de icest Par-
 • lement” pur la Citee de Londrez, en le service le dit Wil-
 • liam Milrede alors esteant, p̄ sotiell ymagination & conjecture
 • de un Margerie Janyns, fust arrestez en le Courte l’Abbe de
 • Westm’ de pipoudrez, p̄ sez Officers illoeqs, & d’illoeqs re-
 • mueve en v̄re commune Bank, p̄ Br’ de corpus cum causa, al
 • fuyte de dit Margerie, & p̄ voz Justicez de v̄re dit Bank com-
 • maundez a v̄re prisone de Flete; & la en prison detenez a
 • present, p̄ force d’un juggement donez envers le dit William
 • Larke, en v̄re dit Bank, p̄ voz ditz Justicez, “ sibi au cause q̄
 • le dit William Larke fust condempne al fuyte de dit Marge-
 • rie, en v̄re dit Bank, en un action de trespas, au cez dama-
 • gez de ccviii. vis. viiij. devaut le jour de summo-
 • nez de icest v̄re Parlement, come pur fyne a Vous a faire,
 • “ purceo q̄ le trespas fust trovez ove force & armes.” Please
 • a v̄re Roial Majeste de considerer, coment “ le dit William
 • “ Larke, al temps de dit areste, fust en la service le dit Wil-
 • “ liam Milrede, supposant verreament p̄ la privilege de v̄re
 • “ Court de Parlement, d’estre quietez de toutz arestez, durant
 • “ v̄re dit Courte, forprise pur treson, felonie, ou suerte de
 • “ pees;” d’ordeigner p̄ auctorite de mesme v̄re Parlement, q̄
 • le dit William Larke purra estre deliverez hors de v̄re dit
 • prison de Flete, le dit condempnation, juggement & execu-
 • tion, ou ascun dependantz sur icell envers & sur luy nient
 • obstant. Salvant toutz foitz au dit Margerie, & a cez Execu-
 • tours, lour execution hors de dit juggement envers le dit Wil-
 • liam Larke, apres le fyne de dit Parlement; “ & auxi de
 • “ grauntier p̄ auctorite suisdite, q̄ null de voz ditz Lieges, c’est

“ assavoir, Seign̄rs, Chivalers pur voz Countees, Citezcins, Bur-
 “ geys, au voz Parlementz desore a venirs, lours servauntz &
 “ familiers, ne soient ascunement arestez, ne en prison detey-
 “ nez, durant le temps de voz Parlementz, sil ne soit pur
 “ treson, felonie, ou suerte de pees, come desuis est dit.”

‘ *Responsio.* Le Roi, p̄ advis des Seign̄rs Espirituelx &
 ‘ Temporelx, & a les especiales requestes des Communes,
 ‘ esteantz en cest present Parlement, “ & auxint de l’assent
 ‘ du Counseill du Margerie Janyns nomez en cest Petition,”
 ‘ voet & graunte p̄ auctorite du dit Parlement, q̄ William
 ‘ Larke nomez en la dite Petition, soit deliverez au present
 ‘ hors de la prison de Flete. Et q̄ la dit Margerie, apres le
 ‘ fyne de cest Parlement, ait sa execution del juggement,
 ‘ q̄ele avait envers le dit William, en le commune Bank,
 ‘ sicome il est continuz en mesme la Petition, en mesme la
 ‘ forme come ele deust avoir eu, si son dit juggement unq̄s ne
 ‘ feust execut. Et q̄ les Juges del dit Bank facent au dite
 ‘ Margerie, apres la fyn de cest Parlement, execution du
 ‘ dit juggement, p̄ Capias ad satisfaciend’, & p̄ Exigent; &
 ‘ auxint facent processe pur n̄re S̄r le Roi, pur son fyne envers
 ‘ le dit William, p̄ Cap’ & Exigent, sicome eux ferroient, si
 ‘ le dit William unq̄s n’ust este pris ne emprisone, p̄ cause
 ‘ du juggement suisdit.—Et outre le Roi voet, p̄ autorite de
 ‘ mesme Parlement, q̄ le Chaunceller d’Engleterre pur le
 ‘ temps esteant, depuis le fyn du dit Parlement, face Com-
 ‘ missions as divers persones p̄ sa discretion assigners, de
 ‘ prendre le dit William, & luy deliverer au Gardein de Flete,
 ‘ q̄i soit tenuz de luy receiver & garder, tan q̄ gree soit fait
 ‘ a l’avaunt dite Margerie, de la somme p̄ luy recovere p̄ le
 ‘ juggement desuisdit, & au Roi, de ceo q̄ a luy appartient
 ‘ celle partie. Et q̄ icell deliverance au dit Gardein, soit de
 ‘ mesme l’effect pur la dite Margerie, come serroit execution

‘ pur luy fait per Capias ad satisfaciend’, aucune variance p la
 ‘ dicte Petition, ou l’endorsement d’icell’, & le recorde du dit
 ‘ recoverer, ou aucun autre chose nient contrestant. “ Et
 “ quant a la remanent de la Petition, Le Roi s’advifera.”

This is the Case to which Sir Edward Coke refers, when he says, in the Fourth Institute, p. 25, “ Privilege of Parliament in Informations for the King.—Generally the Privilege of Parliament does hold, unless it be in three Cases, viz. Treason, Felony, and the Peace.” The Commons certainly declare it to be their opinion, that they had clearly the Privilege “ of being free from all arrests, during the Parliament, except for Treason, Felony, or Surety of the Peace:” But when at the close of the petition they pray, “ that for the future it may be enacted into a law, that no Knights, Citizens, or Burgeffes, or their Servants, may be arrested or detained in prison during the time of Parliament, except for Treason, Felony, or Surety of the Peace;” the King refuses their request, and gives a Parliamentary Negative; and therefore, the more natural conclusion to be drawn, as well from the petition itself as from the King’s answer, appears to be, That, at that time, this proposition was not acknowledged to be law in the extent in which the Commons laid it down*.

The House of Lords in their answer to this Case, when cited by the Attorney General in Lord Arundel’s Case†, suppose the ground upon which the King gave this negative to have been, “ that the latter part of the Bill did comprehend

* It seems difficult to ascertain what the meaning of the King’s Negative is,— Perhaps it meant nothing more than that, the particular Case being provided for,

the King would consent to no general law on the subject.

† Elsyng, p. 217.

“ more than it was fit the royal assent should be given unto,
 “ or more than was, or at this day is, the Law of Parlia-
 “ ment; for it is, that no Member of either House be ar-
 “ rested or detained in prison during the Parliament, saving
 “ in these three Cases. To be arrested, is to be taken by the
 “ officers, by process, or otherwise: To be detained in pri-
 “ son, is either to be detained after an arrest, or after a
 “ commitment from the bar of some court, which is never
 “ called an arrest, though in truth it be one. So that the
 “ Bill desired, not only that none should be arrested or de-
 “ tained upon any arrest, during the Parliament (which is
 “ the only Privilege supposed in the body of the Bill) but
 “ also, that none should be detained in prison during the
 “ Parliament; whereas there is no doubt, but that any of
 “ the House of Commons or their servants, or the servants
 “ of Lords, being detained in prison upon an execution,
 “ served upon them before the time of Privilege of Par-
 “ liament, or being in execution, in any other ordinary
 “ course of justice, before that time, ought to be detained still,
 “ as it is practised at this day. And accordingly, also a fourth
 “ limitation is added to those three, in the 31st Henry VI.
 “ in Thorpe’s Case, where Treason, Felony, Surety of
 “ the Peace, and Condemnation before the Parliament are
 “ the cases excepted; so that there being more asked by the Bill
 “ than the Privilege of Parliament allowed, there was reason
 “ enough why the King assented not to it.” It is certainly
 impossible at present to determine precisely on what ground
 the King refused to grant this part of the petition: supposing
 the explanation given by the House of Lords to be the true
 one, it was by no means necessary to give a general negative
 to the whole of the prayer; the King’s answer might in this,
 as it had done in many other cases, have qualified the gene-

ral words of the petition, and have enacted, " That persons
 " intitled to Privilege should not be arrested, or detained in
 " prison on any arrest made during the time of Parlia-
 " ment, except for Treason, Felony, or Surety of the Peace,"
 which would not have included persons in execution on con-
 demnation before the Parliament, and yet would have satis-
 fied the Commons, by declaring the law in as large a sense as
 they themselves explained it in the former part of the peti-
 tion. Such however are the doubts, and so different are the
 opinions which may be formed from this Record, as to the
 question of " What the Law of Privilege really was at that
 " time," that the conclusion drawn by Sir Robert Cotton
 in his Abridgement, p. 596, " that herein it is to be noted,
 " that there is no cause to arrest any such man, but for
 " Treason, Felony, or the Peace," though the remark of so
 learned an antiquarian, ought not to be hastily and rashly
 adopted.

9. In the tenth year of Henry VI. the following Record is
 entered on the Roll, N°. 39*.

‘ Priont les Communes, pla ou “ Chivalers, Citizeins, &
 “ Burgeiz, venauntz a v̄re Parlement p̄ v̄re commaundement,
 “ de droit & p̄ le ley devoient au dit Parlement franchement
 “ & pesiblement venir, la repaire & demurer, & salvement
 “ p̄ temps covenable retourner;” que please a vous, tres
 ‘ soveraigne S̄r, d’ordiner p̄ auctorite de cest present Parle-
 ‘ ment, q̄ si ascun trespas, offence ou damage ad est, ou serra
 ‘ fait, as persons des Chivalers, Citizens ou Burgeis, ou
 ‘ a leur servautes, ou a ascun d’eux venuz a cest present

' Parlement, p v̄re commaundement; ou as Chivalers, Ci-
 ' tezens ou Burgez, a ellers a venir a v̄re Parlement en
 ' apres, ou de vous heires; q̄ le partie q̄ foy sente ou sentera
 ' issint greve, ait breve de trespas sur son cas, vers cesty ou
 ' ceuz q̄ luy ad fait, ou ferra tielx trespas, offence ou damage,
 ' directe all Vic', ou les trespas, offence ou damage est, ou
 ' ferra fait, au tiel partie greve, retournable devaunt vous en
 ' v̄re Bank issint q̄ p entre la date du dit b̄re, & le jour de re-
 ' tourne d'ycell, soit contenuz l'espace de deux mois; deinz
 ' quele temps, a le Countee a tenur' prochein apres le livere
 ' du dit b̄re, mesme le Viscount fra Proclamation; q̄ cesty
 ' q̄ fait ou ferra tielx trespas, offence au damage, soit de-
 ' vaunt vous n̄re Seignur, en v̄re Bank suisdit, pur respoun-
 ' dre all partie q̄ foy sente ou sentera issint greve, a le jour
 ' contenuz deinz mesme le breve, issint q̄ p entre le dit Coun-
 ' tee, & le jour de retourne du dit b̄re, soit l'espace de xv
 ' jours; a quele jour cesty q̄ ad fait ou ferra tielx trespas,
 ' offence ou damage, & le Proclamation p le Viscount tes-
 ' moigne, ne veigne, soit il atteint del fait suisdit, & maun-
 ' dent adonq̄s lez ditz Justices un breve directe all dit Vis-
 ' count, d'enquerer des Damages q̄ le partie greve ad suffiert,
 ' p l'encheson del trespas & offence suisdit, & l'enquisition p
 ' luy apprendre, de retourner devaunt eux a certeine jour,
 ' issint q̄ le partie greve ait execution p agard des ditz Justi-
 ' ces de ees damages, au double de ceo q̄ ferra trove devaunt
 ' le dit Viscount; & si a jour de retourne du dit b̄re, cesty q̄
 ' ad fait ou ferra tielx trespas, offence ou damage, veigne de-
 ' vaunt les ditz Justic', & soit trove culpables, paie adonq̄s all
 ' partie q̄ foy sente ou sentera issint greve ses damages au
 ' double auxi &c.

' *Responso.* Le Roy s'adviseira.'

Sir Robert Cotton in his Abridgement of this Record, p. 605, calls it "A Motion for speedy redress of and in the actions of all such as were or should be of the Commons House." With respect to the former part of the petition, which desires a remedy to compel the offender to appear; I apprehend there was already a subsisting law to this effect, made but a few years before in Chedder's Case, 5th Henry IV. the purport of which is almost the same with that prayed for in the present petition, and therefore a new act upon this subject was unnecessary: with regard to the punishment of the offender, when he should deliver himself up to justice, it is remarkable how much more moderate the Commons are in their present demand than they had been in the former case, as they desire nothing more than "that the party so committing the trespass, offence, or damage to the persons of the Members or their servants, and being found guilty, should pay to the party aggrieved his double damages." And yet even to this the King refuses his assent, leaving them to obtain redress according to the law as it then stood.

10. However, the next year, the same mischief continuing, and it being found necessary, from the frequent assaults made on Members attending their duty in Parliament, to apply some more speedy and effectual remedy than what the common law allowed, the House of Commons again are obliged to petition the King for redress, which they do in the following manner:

• Rot. Parl. 11 Hen. VI. N°. 60*.

• Item, priount les Communes, q̄ come au Parliament tenuz

‘ a Westm’ lendemayn de Saint Hillarie, l’an du reigne le
 ‘ noble Roy v̄re aiel quint, entre autres soit contenuz en la
 ‘ fourme q’ensuyt :

“ Item, pur ceo ī Richard Chedder, Esquier, quy fust
 “ venuz a cest present Parliament ovesq̄ Thomas Brooke,
 “ Chivaler, un des Chivalers esluz en mesme le Parliament
 “ pur le Counte de Somers’, & mayneall ove le dit Thomas,
 “ fust horriblement naufrez, emblemez & maheyme, p
 “ John Salege, autrement appelle John Savage; ordeine est
 “ & establie, q̄ p tant q̄ le dit horrible fait fust fait deinz le
 “ temps du dit Parlement, q̄ Proclamation soit fait la ou
 “ mesme l’orrible fait se fist, q̄ le dit John appierge, & soy
 “ rende en Bank le Roy, deinz un quarter d’an apres la Pro-
 “ clamation fait; & s’il ne face, soit mesme celuy atteint de
 “ la fait suifdit, & paie al partie greve ses damages a double,
 “ a taxer p discretion des Justices du dit Bank pur le temps
 “ esteantz, ou p enquest s’il boisoigne, & face fyn & raun-
 “ ceon a la voluntee du Roy: Et outre ceo, accordez est en
 “ Parlement, q̄ semblablement soit fait en temps a venir en
 “ cas semblable,” sicome “ en le dit Estatuit,” puis au pleine
 ‘ est contenuz. Et ore est ensy, q’en mesme cest present Par-
 ‘ liament, un graund assaut & affraie encountre la peas n̄re
 ‘ tres fovereigne S̄r le Roy, est fait a Richard Quatremains,
 ‘ un des Chivallers pur le Countee d’ Oxenford en cest present
 ‘ Parliament.

‘ Sur quoy please a n̄re S̄r le Roy, p auctorite de cest pre-
 ‘ sent Parlement d’ordeigner, q̄ si ascun affraie ou assaut soit
 ‘ fait, p ascun persone, a ascun Chivaler, Citezin ou Burgeys,
 ‘ venuz a cest present Parlement, ou a ascun Chivaler, Cite-
 ‘ zyn ou Burgeys, eslier au Parliament en temps a venir; q̄
 ‘ Proclamation soit fait la ou mesme l’assaut est fait, ou temps

' a venir ferra fait, q̄ celuy q̄ face tiel affaut ou affraie, soy
 ' rende en Bank le Roy, deinz un quarter d'un an apres la
 ' Proclamation fait; & s'il ne face, q'il soit atteint de le fait
 ' fuifdit, & paie al partie greve ses damages au double, a
 ' taxer p le discretion des Justices du dit Bank pur le temps
 ' esteantz, ou p enquest s'il bofoigne, & face fyn & raunceon
 ' a la voluntee du Roy'. Et s'il veigne & trove soit coupable
 ' p enquest, p examination, ou en autre manier, de tiel affraie
 ' ou affaut, paie il donqes al partie ensy grevee ses damages a
 ' double, trovez p le enquest, ou a taxer p le discretion des
 ' ditz Justices, & face fyn & raunfeon a la volunte le Roy,
 ' come desuis est dit.

' *Responſio.* Le Roy voet, q̄ si ascun affaut ou affraye soit
 ' fait a ascun Seignr Espirituel ou Temporell, Chivaler de
 ' Countee, Citezein ou Burgeis, venuz au Parlement " ou
 ' " au Counseil du Roy" p son commandement, & la esteant
 ' & entendant au Parlement, " ou au Counseil;" q'adonqes
 ' soit Proclamation fait p trois jours severalx, en la pluis
 ' overt lieu de la Ville ou l'affaut ou affraye fuist ensy fait, q̄
 ' la partie qi face tiel l'affaut ou affraie, soy rende devaunt le
 ' Roy en son Bank, deinz un quarter d'un an apres la Pro-
 ' clamation fait, s'il soit el temps du terme, ou autrement all
 ' prochain jour en temps de terme, ensuant le dit quarter, a
 ' faire & recevoir en manere come il este desire p la Petition.'

And from this petition and answer the Act of 11 Henry VI.
 ch. 11, " for the punishment of those that make assault
 " upon any that come to the Parliament," is drawn up and
 entered on the Statute Roll; and, as I observed before under
 Chedder's Case, not only enforces the provisions of the 5th
 Henry IV. ch. 6, to compel the appearance of the offender;
 but,

but, on his conviction, gives double damages to the party grieved, with fine and ransom to the King*.

11. Notwithstanding these repeated Acts of Parliament to secure the Members of both Houses from any insults on their persons, such was the licentiousness of the times, or rather, so slow and ineffectual were the remedies given by these laws, that in a very few years the Commons again apply to the King for farther provisions to suppress this very dangerous practice.

* Rot. 23 Hen. VI. N°. 41 †.

‘ Prayen the Communes in this present Parlement assembled, that it please unto the Kyng oure Soveraigne Lorde; by thavis of his Lordes Spirituell and Temporell in the seid Parlement beyng, to ordeine, estable and auctorise in the seid Parliament, ant by auctorite of the same; that if any person or persones make any assault or affray upon the seid

* The very ingenious Author of “ Observations on the Statutes, chiefly the “ more antient,” has, in a note in his Commentaries on the 5th Henry IV. ch. 6, page 301, made a slight mistake; which, in a work abounding with such a variety of useful and excellent learning, I am almost ashamed to take notice of; he says, “ that it deserves notice that “ Richard Cheader (this should be John Salage; the names are right in the text) “ on surrendering himself is to make satisfaction, either by the award of the “ Judges of the King’s Bench, or by a “ Jury: and I do not recollect an instance of such an alternative.” Now, it is clear that the act 5 Henry IV. ch. 6,

is made in order to compel John Salage to surrender, and that these penalties are only to take place if he does not appear within three months.—However, in the Statute of 11th Henry VI. ch. 11. wherein it is declared what punishment shall for the future be inflicted on such offenders when they do surrender; it is enacted, “ that if he “ come and be found guilty by inquest, “ by examination or otherwise, of such “ affray or assault, that he shall pay to “ the party so grieved his double damages found by the inquest, or to be “ taxed by the discretion of the said Justices, and make fine and ransom at “ the King’s will.”

† Page 111.

• Lordes or Communes, or upon any of hem, “ beyng in
 • the seid Parliament, or from thens retournyng homeward,”
 • or upon any Lord, Knyght of the Shire, Citezein or Bur-
 • geis, at any tyme hereafter by the Kynge’s commaunde-
 • ment “ comyng to high Court of Parliament, there abid-
 • yng, or from thens retournyng to his dwellyng place,”
 • that then the seid Lord, Knyght of the Shire, Citefein or
 • Burgeis, upon whom such assault or affray is made, have
 • such Writte or Writtes of Proclamation, as by an Act in
 • this faide present Parlement for S^r Thomas Parr’ Knyght,
 • is in like cas ordeined to be hade, to be directed to such
 • Shirif or Shirifs where the trespas is supposed to be done,
 • retournable or retournables at eny day to be desired by
 • the same partie compleignant, afore the Kyng in his
 • Benche; the same partie compleignant, to have therupon
 • such appance, or els upon ye defaute of appaunce of the
 • person or persones upon whom it is in that partie com-
 • pleigned, such execution as is ordeined also in the said Acte,
 • for ye seid S^r Thomas.

• *Responso.* Soient * l’Estatutz faitz devaunt cez heures
 • en cest partie, tenuz, gardez & observez, en toutz poyntes.

I cannot, upon the most accurate search, find any thing relating to this Sir Thomas Parr, either in the Records themselves, the Statutes, or the Parliamentary History, and am therefore at a loss to know what particular remedy he had obtained on this occasion.

12. The next in point of time is the famous Case of Thomas Thorpe, who was Speaker of the House of Commons, and being arrested at the suit of the Duke of York, and then

* That is, the Statutes of 5 Henry IV. ch. 6, and 11 Henry VI. ch. 11.

in prison, the Commons make the following application to the King for his release:

“ Rot. Parl. 31 & 32 Hen. VI. N°. 25, 26, 27, 28, 29*.
 “ 25. Fait a remembrer, q̄ le dit quatorziesme jour de Feverer,
 “ l’an suifdit, les Communes, “ p̄ certeyns de leur Com-
 “ paignons,” firent request au Roy, “ & les Seign̄rs Espi-
 “ rituelx & Temporelx” en le dit Parlement esteantz,
 “ qu’eux peussent avoir & ensjoier toutz tielx Libertees &
 “ Privileges, come ount este accustumes & d’auncien temps
 “ usez pur venantz au Parlement; & concordant a mesmes
 “ les Libertees & Privileges, q̄ Thomas Thorp leur commune
 “ Parlour, & Walter Rayle, Membres de le dit Parlement,
 “ adonques esteantz en prison, peussent aler a leur large &
 “ libertee, pur le boon esloit du dit Parlement.

“ 26. Item, the Friday the xv day of Feverer, it was
 “ opened and declared “ to the Lordes Spirituelx and Tem-
 “ porelx beyng in the Parlement Chambre,” by the Coun-
 “ fail of the Duke of York; That where Thomas Thorp,
 “ the Monday the . . . day of the moneth of the
 “ yere of the reigne of Kyng Harry the Sexte xxxi, came
 “ to the place of the Bishop of Durham, and then and there
 “ toke and bare away certeyn godes and cateles of the seid
 “ Dukes, agayn his will and licence; and theruppon the
 “ same Duke camed and toke an action by Bille in Michell
 “ terme last past agayn the seid Thomas, in the Court of
 “ th’ Eschequer, accordyng to the Privilege of the same
 “ Court, for somuche that the same Thomas was oon of the
 “ Court, by which Privelegge he ought to be enpleted in

‘ that Court of th’ Eschequer in suche cases, and in noon
‘ other Court; to the which Bille the seid Thomas wilfully
‘ appered, and had diverse daies to emparle atte his requeste
‘ and desire, and to the said Bille and Action aunswered and
‘ pleted not gylty: Whereuppon ther was awarded in the
‘ seid Eschequer, a Venire Fac’ to the Shirreve of Midd’;
‘ retornable in the seid Eschequer, and there by the Jurre
‘ that passed betwene the said Duke and the said Thomas,
‘ it was founde that the same Thomas was gylty of the tres-
‘ pas conteigned in the seid Bille. And the same Jurr’ as-
‘ sessed the dampmages to the said Duke for the seid trespass
‘ to a m.li., and for his costes xli., and therupon juggement
‘ was yeven in the seid Eschequer, and the said Thomas
‘ accordyng to the cours of the lawe was committe to the
‘ Flete, for the fyne belongyng to the Kyng in that behalve.
‘ And thereupon it was praied humbly of the behalve of the
‘ seid Duke, that it shuld like their goode Lordships, con-
‘ sideryng that the said trespass was doon and committe by
‘ the said Thomas sith the begynnyng of this present Par-
‘ lement, and also the said Bille and Action were take and
‘ camed, and by processe of lawe juggement theruppon
‘ yeven agayn the said Thomas, “ in tyme of vacation of the
‘ same Parlement, and not in Parlement tyme;” and also that
‘ if the said Thomas shuld be releffed by Privelegge of
‘ Parlement, or the tyme that the seid Duke be satisfied of
‘ his said dampmages and costes, the same Duke should be
‘ withoute remedie in that behalve; that the seid Thomas,
‘ accordyng to the lawe, be kepte in warde to the tyme
‘ that he have fully content and satisfied the said Duke of
‘ his said dampmages and costes: The seid Lordes Spiri-
‘ tuelx and Temporelx, not entendyng to empeche or hurt

the Libertees and Privelegges of theym that were comen
for the Commune of this lande to this present Parlement,
but egally after the cours of lawe to mynystre Justice,
and to have knowlegge what the lawe will wey in that
behalve, opened and declared to the Justices the premishez,
and axed of theym whether the seid Thomas ought to be
delivered from prision, by force and vertue of the Prive-
legge of Parlement or noo. To the which question, the
chefe Justicez in the name of all the Justicez, after sadde
communication and mature deliberation hadde amonge
them, aunswered and said; " That they ought not to aun-
swere to that question, for it hath not be used aforetyme,
that the Justicez shuld in eny wyse determine the Prive-
legge of this high Court of Parlement; for it is so high
and so mighty in his nature, that it may make lawe, and
that that is lawe it may make noo lawe; and the deter-
mination and knowlegge of that Privelegge belongeth to
the Lordes of the Parlement, and not to the Justices.

" 27. But as for declaration of procedyng in the lower
Courtes, in suche cases as writtes of Superfedeas of Prive-
legge of Parlement be brought and delivered, the said chief
Justice said, that ther be many and diverse Superfedeas
of Privelegge of Parlement brought in to the Courtes,
but ther ys no generall Superfedeas brought to surcesse of
all processe; for if ther shuld be, it shuld seeme that this
high Court of Parlement, that ministreth all justice and
equitee, shuld lette the processe of the commune lawe,
and so it shuld put the partie compleynaunt withoute
remedie, for so muche as actions atte commune lawe be
not determined in this high Court of Parlement; and if
any persone that is a membre of this high Court of Par-
lement be arested in suche cases as be not for treason or
felony,

“ felony, or fuerte of the peas, or for a condemnation
 “ hadde before the Parlement, it is used that all such per-
 “ sones shuld be releffed of such arrestes and make an
 “ attourney, so that they may have their freedom and liber-
 “ tee, frely to entende upon the Parlement.”

‘ 28. After which answer and declaration, it was tho-
 ‘ rowly agreed, assented and concluded by the Lordes Spi-
 ‘ tuelx and Temporelx, that the seid Thomas, accordyng to
 ‘ the lawe, shuld remayne stille in prison for the causes
 ‘ abovesaid, the Privelegge of the Parlement, or that that
 ‘ the same Thomas was Speker of the Parlement, notwith-
 ‘ stondyng; and that the premisses should be opened and de-
 ‘ clared to theym that were comen for the Commune of
 ‘ this land, and that they shuld be charged and com-
 ‘ maunded in the Kynges name, that they with all goodly
 ‘ hast and spede, procede to th’ election of an other Speker.
 ‘ The which premisses, forasmuche as they were materes in
 ‘ lawe, by the commaundement of the Lordes were open’d
 ‘ and declar’d to the Commons, by the mouthe of Walter
 ‘ Moyle, oon of the Kynges Sergeauntz atte lawe, in the
 ‘ presence of the Bisshop of Ely, accompanied with other
 ‘ Lordes in notable nombre; and ther it was commaunded
 ‘ and charged to the said Commons, by the seid Bisshop of
 ‘ Ely in the Kynges name, that they shuld procede to th’
 ‘ election of an other Speker with all goodly hast and spede,
 ‘ so that the materes for the which the Kyng called this his
 ‘ Parlement might be proceded yn, and this Parlement take
 ‘ goode and effectuell conclusion and ende.

‘ 29. Item, Sextodecimo die Februarii tunc prox’ sequen’,
 ‘ prefati Communes, per quosdam de Sociis suis declarave-
 ‘ runt Dominis Spiritualibus & Temporalibus in presenti
 ‘ Parlamento, quod ipsi mandatum ex parte Domini Regis
 ‘ pridie

• pridie fibi injunctum cum omni diligentia exequentes
 • elegerunt loco prefati Thome Thorp, Thomam Charleton
 • Militem Prelocutorem suum, humillime deprecando qua-
 • tinus prefatus Dominus Rex hujusmodi electionem vellet
 • acceptare. Quibus, per Dominum Cancellarium Anglie,
 • de mandato dicti Domini Regis, & avisamento Consilii
 • sui, extitit responsum, “ Quod idem Dominus Rex de
 • electione prefati Thome Charleton se bene contentavit,”
 • injungendo eis quatinus ad expeditionem negotiorum Par-
 • liamenti predicti cum omni diligentia procederent.’

It appears from the Fourth Register, p. 683, “ that the
 “ Parliament was adjourned from the 22d of November to
 “ the 11th day of February next following:” Or, as is per-
 haps more accurately stated in the second volume of the Par-
 liamentary History, p. 270, that the Lord Chancellor, on
 the 2d day of July, prorogued the Parliament to Reading
 to the 7th day of November following; and that on that day
 it was from thence adjourned to the 11th day of February,
 and then prorogued to the 14th of February:—“ That
 “ the Duke immediately after the adjournment sued Thorpe
 “ in the Exchequer by Bill, and prosecuted him so close,
 “ though Speaker, and a Baron of the Exchequer, in his own
 “ Court, that between the 23d of October and 11th of Fe-
 “ bruary, he got both a verdict against him by a Jury of
 “ Middlesex for one thousand pounds damages, and ten
 “ pounds costs of suit, and likewise a judgment, and took
 “ and detained him prisoner in the Fleet thereon, between
 “ this adjournment and the Parliament’s meeting, some few
 “ days before their re-assembling.”

Indeed the method of proceeding, as well as the expedition,
 F that

that was used throughout the whole of this Case, appears at first sight very extraordinary; First, That the Commons should apply to the Lords, as well as to the King, for redress in a matter in which their own Privileges were essentially concerned: Secondly, That, notwithstanding the opinion of the Judges most formally declared, "That persons arrested for any other cause than for Treason, Felony, or Surety of the Peace, or for a Condemnation had before the Parliament, ought to be released," the Lords should adjudge that Thorpe, who came within none of these descriptions, should according to the law remain still in prison: And thirdly, That the Commons should so easily acquiesce in this decision, and immediately proceed to the election of another Speaker; and the whole of this transaction was but the business of three days, the 14th, 15th, and 16th of February.

But when we compare the uncommon expedition with which this very important affair was hurried over; the judgment of the Lords, so directly contrary to the conclusion which ought to have been drawn from the opinion delivered by the Chief Justice; the command of the Bishop of Ely to elect another Speaker, signified immediately subsequent to the judgment, and, as far as appears, without any communication with the King; and the obedient submission of the Commons; I say, all these circumstances, being compared with the very high situation in which the plaintiff Richard Duke of York then stood, who was, as appears from the Parliamentary History, that very day, the 14th of February, appointed President in the said Parliament, and was himself present, and took a part in the hearing of his cause, may be thought fully to justify the opinion of Sir N. Rich, who, when this precedent

was cited in a debate on the 8th of March 1620, says, " It is
" a Case begotten by the iniquity of the times, when the Duke
" of York might have an overgrown power in it; and I
" therefore wish it may not be meddled with*.

13. In the 39th year of Henry VI. the Commons petition
the King in favour of Walter Clerke, a Member then in
prison:

* Rot. Parl. 39. Hen. VI. N°. 9†.

" Item, quedam alia Petitio exhibita fuit eidem Domino
" Regi in Parlamento predicto, per prefatos Communes, sub
" eo qui sequitur tenore:

" To the Kyng oure Soverayne Lord; Prayen the Com-
" mons, for als moch that grete delaye hath been in this Par-
" lement, be that that Waulter Clerke Burgeyes of Chypen-
" ham in the Shire of Wiltes', which com by your high com-
" maundement to this youre present Parlement, and attend-
" yng to the same in the house for the Commens accustomed,
" the fredome of which Commens soo called, hath ever
" afore this tyme been and oweth to be, the same Commens
" to have fre commyng, goyng, and there abidyng; ayens
" which fredome, the seid Waulter was, after his said com-
" myng, and duryng this your present Parlement, arested at
" your sute, for a fyne to be made to youre Highnes, and
" inprisoned in the Counter of London, and from thens
" remoeved into your Eschequer, and then committed into
" your pryson of Flete, aswell for xlii. in which he was
" condempned to youre Highnes, and also for xx Mark', in
" which he was condempned to Robert Bassett, in an action
" of trespas, and also for xxli. in which he was condempned:

* Commons Journals, Vol. I. p. 546.

† Page 374.

‘ to John Payne, in an action of mayntenaunce, and for the
‘ fynes due to youre Highnes in the same condempnation;
‘ and sithen that committyng, the seid Waulter was oute-
‘ lawed at the sute of the said John Payne, and for that and
‘ other premisses, in the same pryson of Flete is reteigned,
‘ ayens the Libertees and Fredomes used, had and enjoyed
‘ afore this tyme by youre seid Commons.

‘ Please it youre Highnes, in eschewyng the seid delaye
‘ caused by the premisses, by th’avis and assent of the Lordes
‘ Spirituell and Temporell in this present Parlement assem-
‘ bled, and by auctorite of the same, to ordeyne and sta-
‘ blysh, that your Chaunceller of Englund have power to
‘ direct youre Writte or Writtes to the Warden of the seid
‘ prison of Flete, commaundyng hym by the same, to have
‘ the seid Waulter afore hym without delaye, and then hym
‘ to dysmysse at large, and to discharge the seid Warden of
‘ hym, of and for every of the premisses, so that the seid
‘ Waulter may tende daily of this youre Parlement, as his
‘ dute is to doo. And that by the seid auctorite, nouthur
‘ your seid Chaunceller, Warden of Flete, nor any other per-
‘ sone nor persones, in eny wise be hurt, endamaged nor
‘ greved, because of the seid dismissing at large of the seid
‘ Waulter. Savyng alway aswell to you, Souverayne Lord,
‘ youre execution of youre seid xlii., and of youre seid fyne,
‘ and all other youre interese in that partie, as to the
‘ seid Robert Basset, and John Payne, and iche of theym,
‘ their execution in the premisses, after the dissolvynge of this
‘ your present Parlement, the seid arest of the seid Waulter,
‘ and the seid committing and prisionyng of hym to Warde
‘ notwithstanding. Also plenerly and effectually as if the
‘ same Waulter at eny tyme for any of the premisses never
‘ had been arested nor committed to Warde: Savyng also to
‘ youre seid Commens called nowe to this youre Parlement,

‘ and their successours, their hole Libertees, Fraunchises and
 ‘ Privileges, in alse ample fourme and manere as your seid
 ‘ Commens at eny tyme afore this day have had, used and
 ‘ enjoyed, and oweth to have, use and enjoye, this present
 ‘ Acte and Petition in eny wise notwithstanding.

‘ Qua quidem Petitione, in Parlamento predicto lecta,
 ‘ audita & plenius intellecta, de avisamento & assensu Do-
 ‘ minorum Spiritualium & Temporalium in dicto Parlia-
 ‘ mento existen’, & ad requisitionem Communitatis predicte,
 ‘ respondebatur eidem in forma sequenti :

‘ *Responsio.* Le Roy le voet.’

On comparing this Case with that of Lark, N°. 8, who was likewise a prisoner in Execution on a Judgment, and was released by Act of Parliament, saving to the creditors their right of taking him again in execution when the time of Privilege should expire, I cannot find upon what particular ground it was thought necessary, in the present instance, to indemnify the Chancellour for issuing the writ for his discharge; or the Warden of the Fleet for obeying it. Elfyng, p. 245, raises a still further doubt, “ Whether there
 “ was even a necessity for an Act of Parliament to deliver
 “ the party privileged out of execution.” He says, “ There
 “ may be much dispute upon this question. The strongest
 “ allegation against it is, that it will prejudice the plain-
 “ tiff’s execution : but since the party privileged is not to be
 “ arrested for any debt, trespass, or contract, prout an. 5
 “ Hen. IV. N°. 71, nor can be arrested during the Parlia-
 “ ment, but for Treason, Felony, or Breach of the Peace,
 “ prout an. 8 Hen. VI. N°. 57, my opinion is, that the
 “ arrest upon an execution for debt, trespass, or contract,
 “ is merely void, and then it can be no prejudice to the
 “ plaintiff,

“ plaintiff, but he may have a new execution after the end
“ of the Parliament, so that an Act to deliver him that is
“ so arrested, or to save the plaintiff’s rights for a new exe-
“ cution is ex abundanti, and needless.” But Mr. Elfyng
had forgot that the Judges, in giving their opinion of the
extent of Privilege of Parliament in Thorpe’s Case, had, to
the three exceptions of Treason, Felony, and Surety of the
Peace, added a fourth, viz. “ A Condemnation had before
“ the Parliament,” which expression, though Mr. Elfyng
thinks, p. 247, “ that it cannot be understood to except Ar-
“ rests upon execution sitting the Parliament, but only such
“ arrests as happen in the interim between the adjournment
“ and the access, as Thorpe’s was,” will bear the other
construction, and may be understood to mean, that for any
judgment or condemnation had before the Privilege of
Parliament, the party may be taken in execution even sitting
the Parliament, as he might be for Treason, Felony, or on
Surety of the Peace: and if this was then understood to be
the law, no Writ of Privilege, nor any thing less than an
Act of the Legislature, would certainly have been admitted
to release him. I do not presume to give any opinion
myself upon this question started by Elfyng, “ Whe-
“ ther the party so taken in execution could be delivered
“ without an Act of Parliament:” But that an Act of Par-
liament was necessary to save the plaintiff’s right to a new
execution, appears not only from several instances which
follow, but from the statute of the 1st James I. chap. 13,
which was made expressly “ to allow new executions to be
“ sued against any which shall hereafter be delivered out of
“ execution by Privilege of Parliament, and for discharge of
“ them out of whose custody such persons should be de-
“ livered.”

It

It will immediately occur to every one who reads the foregoing Cases as entered at length in the Records, (1) That the Privileges claimed by the House of Commons during this period were only for the Knights, Citizens and Burgeſſes, and their meſnial ſervants, or familiares, preſent with them in their attendance on Parliament: (2) That the duration of theſe Privileges is in no inſtance carried farther than in their coming, ſtaying, and returning to their homes: And (3) That the extent of the Privilege claimed is to be free from any aſſault, or from arreſts or imprisonment, except for Treason, Felony, or Surety of the Peace. No Caſe has hitherto occurred in which the Commons have claimed the Privilege of not being impleaded in any action or ſuit during their attendance; which is the more remarkable, becauſe about this time it appears, from an Act of Parliament made in Ireland, that the Irish Houſe of Commons conſidered this as a known, avowed, and eſtabliſhed Privilege of Parliament. The Act is as follows:

“ Anno 3 Edw. IV. cap. 1^{mo}.
 “ At the requeſt of the Commons, where the Privilege of
 “ every Parliament and great Council of this land of Ire-
 “ land is, that no Miniſter of the ſaid Parliament, coming or
 “ going to the ſaid Parliament during forty days before and
 “ forty days after the ſaid Parliament finiſhed, ſhould not
 “ be impleaded, vexed, nor troubled by no mean: This not-
 “ withſtanding, one Lawrence Tathe, Eſq; hath arraign’d
 “ Aſſiſe of novel diſſeizin againſt John Barnewall being
 “ Knight for the county of Dublin in this preſent Parlia-
 “ ment, as it is informed, for two water mills in Athirde,
 “ in the county of Lowthe, the writ being returnable be-
 “ fore our Sovereign Lord the King, in his chief place in
 “ Ireland,

“ Ireland, to the intent that he may recover the said two
“ mills against the said John Barnewall, by default, con-
“ trary to reason and conscience, and the Privilege afore-
“ said: Whereupon, the premises considered, it is ordained,
“ enacted, and established by authority of the said Parlia-
“ ment, That the said Writ of Affize so taken against the said
“ John in any other Court of the King, or before his Com-
“ missioners in whatsoever manner it be, against him solely,
“ or against him jointly, with any other person or persons
“ whatsoever, and all the Records thereunto pertaining, be
“ deemed, adjudged, and holden void, and of none effect in
“ all points as it had never been sued nor taken against him
“ sole or him jointly, with any person or persons whatsoever.
“ And further be it also enacted and established, That every
“ Minister, as well Lords, Proctors, as Commons, be dis-
“ charged and quitted of all manner of actions, had or moved
“ against them, or any of them, during the time aforesaid,
“ and this to endure for ever.”

We have seen Before, by the Writs of Superfedeas issued in the eighth year of Edward II. that the idea of Members not being impleaded, vexed, or troubled during their attendance, was then known and adopted in legal proceedings; it is therefore very strange that, from that time to the twelfth of Edward IV. a space of above one hundred and fifty years, no Case should appear upon the Records of Parliament in which this Privilege is ever brought into question: For Prynne says, in the Fourth Register, p. 735, “ that of this there is not one petition or
“ complaint to be found in any Parliament Roll in the Tower,
“ or other antient Record that he could ever meet with on the
“ strictest enquiry.” Another circumstance that is curious in the law passed at this time in Ireland is, that the duration of
Privilege

Privilege should be ascertained to forty days before the meeting, and forty days after the conclusion of the Parliament; whereas, in England, I recollect nothing established by law upon this point till the 12th and 13th William III. ch. 3, and there it is only enacted, "That no Action or Suit shall be prosecuted against any person entitled to Privilege, unless the adjournment shall be for above fourteen days." * But as to what the duration of Privilege ought to be under the words "coming, staying, and returning to their homes," we shall find in the following Cases a great variety of opinions upon this subject, nor do I know that even to this hour it is any where precisely defined or determined †.

The two next Cases which occur, are not taken from the Rolls of Parliament, but are copied by Prynne, in the Fourth Register, p. 752, from the Records in the Court of Exchequer.

14. The first is that of Donne and Walsh, twelfth year Edward IV. Rot. 20.

Barthol. Donne brings his Bill against John Walsh, a servant of Henry Earl of Essex, for the sum of fourteen pounds eighteen shillings, which Walsh owed upon his bond: To this John Walsh, in his answer, produces the King's Writ under the Great Seal; *cujus tenor sequitur in hæc verba:*

' Edwardus Dei gratia Rex Angliæ & Franciæ, & Dominus Hiberniæ, Thesaur. & Baronibus suis de Scaccario, Sa-

* By statute 4th Geo. III. ch. 24. the right of Members to send their letters free from postage, is ascertained to continue, during the sitting of Parliament, and within 40 days before, and 40 days after

any summons or prorogation of the same.

† See Lord Hardwicke's opinion upon this question, in giving judgment in Colonel Pitt's Case, which is reported in Strange's Reports, page 985.

• Item. Cum, secundum consuetudinem in regno nostro hac-
 • tens optentam et approbatam, Domini Magnates, Milites
 • Comitatum, ac Cives et Burgenses Civitatum et Burgo-
 • rum, ad Parliamenta nostra de summonitione nostra venien-
 • tes, ac eorum familiares, ratione alicujus transgressionis,
 • debiti, computi, conventionis aut alterius contractus cujus-
 • cunque, dum sic in Parliamentis nostris morentur, arrestari
 • minime debeant, imprisonari, aut “implacitari;” ac jam ex
 • querela &c. &c. vobis mandamus, quod si ita est, tunc pla-
 • cito illi coram vobis ulterius tenendo supersedeatis omnino,
 • et ipsum a prisione, si qua occasione prædicta, et non alia, de-
 • tineatur in eadem, sine dilatione deliberari faciatis.—Teste
 • meipso apud Westm. 25 die Noembris, anno regni nostri
 • 12°.

• Et prædictus Johannes Walshe jam defendens dicit, quod
 • ipse est et dicto 25 die Novembris et semper postea fuit ser-
 • viens familiaris prædicti Comitis, et cum eo ad prædictum
 • Parliamentum venit. Et petit judicium &c. Et super hoc
 • prædictus Bartholomæus petit, quod breve illud, pro eo
 • quod non habetur nec unquam habebatur talis consuetudo,
 • quod Magnates, et Milites Comitatum, ac Cives et Bur-
 • genses Civitatum et Burgorum ad Parliamentum de summo-
 • nitione regia venientium, ac eorum familiares ratione ali-
 • cujus transgressionis, debiti, computi, conventus, aut alterius
 • contractus cujuscunque dum sic in Parlamento regio mo-
 • rentur, minime debeant implacitari, prout in brevi illo spe-
 • cificatur et recitatur, disalloceatur.

• Et super hoc viso et prælecto brevi prædicto per Barones,
 • &c. habitoque avisamento Justiciariorum Domini Regis
 • de utroque Banco; Quia videtur præfatis Baronibus de avi-
 • samento Justiciariorum prædictorum, quod talis habetur et
 • habebatur consuetudo, quod Magnates et Milites Comita-
 • tum, ac Cives et Burgenses Civitatum et Burgorum ad Par-
 • liamentum de summonitione regia venientes, ac eorum fami-
 • liares,

‘ liares, ratione alicujus transgressionis, debiti, computi, con-
 ‘ ventionis, contractus cujuscunque, dum sic in Parlamento
 ‘ Regis morentur, capi aut arrestari non debent: sed nullam
 ‘ hujusmodi consuetudinem fore, quod quin implacitari de-
 ‘ bent, prout in brevi illo supponitur; ideo consideratum est
 ‘ per Barones prædictos, quod breve illud disallocetur, et quod
 ‘ prædictus Johannes Walshe respondeat, brevi prædicto non
 ‘ obstante &c.’

15. The next Case is that of Ryver and Cosins, taken from
 the Plea Roll of the Exchequer, Hil. Term, 12^o Edw. 4th.
 Rot. 7. Here the defendant pleads the King’s Writ, in which
 the custom is set forth as followeth:

‘ Edwardus Dei gratia Rex &c. Theſ. et Baronibus suis de
 ‘ Scaccario, Salutem.—Cum, secundum consuetudinem in reg-
 ‘ no nostro Angliæ hætenus optentam et approbatam, Do-
 ‘ mini Magnates et Milites Comitatum, ac Cives et Burgen-
 ‘ ses Civitatum et Burgorum ad Parliamenta nostra de sum-
 ‘ monitione nostra venientes, et in eisdem morantes seu resi-
 ‘ dentes, ac eorum familiares et servientes ratione alicujus
 ‘ transgressionis, computi, conventionis, seu alterius contractus
 ‘ cujuscunque, dum sic in Parliamentis nostris morentur, ar-
 ‘ restari minime debeant, imprisonari, “ seu implacitari.” Et
 ‘ jam ex gravi querela &c. vobis mandamus quod, si ita est,
 ‘ tunc placito illi supersedeatis omnino &c. &c. Et prædictus
 ‘ Robertus Cosyn jam defendens dicit, quod ipse ad respon-
 ‘ dendum non compelli debeat, et petit judicium et breve præ-
 ‘ dictum sibi allocari &c.

‘ Et super hoc, prædictus Johannes Ryver petit, quod
 ‘ breve illud, pro eo quod non habetur, nec unquam habeba-
 ‘ tur talis consuetudo, quod Magnates &c. minime debeant
 ‘ implacitari, disallocetur.’

Et super hoc, The Barons, with the advice of the Judges of both the other Courts, reciting, verbatim, their opinion in the former Case of Wallsh and Donne, "that no such custom existed to prevent their being impleaded," disallow the writ.

I beg to refer the Reader to Mr. Prynne's Observations on these two Cases, in the Fourth Register, p. 762, as containing matter of much parliamentary instruction.

16. Within two years after this opinion formally delivered from all the Judges of England, that persons entitled to Privilege, *capi aut arrestari non debeant ratione alicujus transgressionis, &c.* occurred the Case of a Member of the House of Commons arrested, sitting the Parliament, and detained in Newgate for debt.

The Record, as entered in the Parliament Roll, fourteenth Edward IV. N°. 55*, is as follows:

' Prayen the Commens in this present Parlement assembled;
' that forasmoche as William Hyde, Squyer, Burges of the
' toune and burgh of Chippenham in Wiltshire electe, came
' by your high commaundement to this youre present Parle-
' ment, and attendyng to the same in the Hous for the Com-
' mens accustomed, after his said comyng, and duryng this
' your said Parlement, was arested at Lambhith in the counte
' of Surr' by colour of a Capias ad Satisfaciend', that was
' directed to the Shireff of Middlesex, and so there by mysche-
' vous men, murtherers, unknowen for any officers, taken and
' withoute the shewyng of any warant, carried hym to Lon-
' don, at the sute of John Marshall Citezein and Mercer of
' the same, for 69l., supposed to be due to hym by the said

* Page 160.

• William, and for the same enprisoned in the Counter there,
• and from thens had to Newgate, and as he had bee a trai-
• tour, and then brought to your Bench tofore your Justices,
• and by theym remytted to Newgate, and there in execu-
• tion for the said 69 l. and for a fyne or fynes that belong-
• eth to your Highnes by meane and cause of the said Suyte
• or Condempnation, or for other Sutes; and also for
• 4l. 6s. 8d. in which he was condempned to Thomas Gay
• the yonger, Citezein and Taillour of London, in an action
• of dette: and so for the premishez in the said prisone of
• Newgate is reteyned, to grete delay and retardation of pro-
• cedyng, and goode expedition of such matiers and be-
• soignes, as for your Highnes and the common wele of this
• your reame in this present Parlement were to be doon and
• spedde.—It pleas your Hignes by the advis and assent of
• the Lordes Spirituelx and Temporelx in this present Parle-
• ment assembled, and by auctorite of the same, to ordeyne
• and stablish, that your Chaunceller of Englund have power
• to direct your writte or writtes to the Shirefs of London,
• commaundyng theym, and everych of theym, by the same,
• to have the said William Hyde afore hym withoute delay;
• and then to dismyffe hym at large, and to discharge the said
• Shirefs and everych of theym of hym, of and for every of
• the premysses, so that the said William Hyde may attende to
• this your Parlement, as his duetie is to doo; and that by
• the said auctorite, neither your said Chaunceller, Shirefs,
• neither any of theym, or any other persone neither persones
• in any wyse be hurt, endamaged, charged, neither grieved by
• cause of the said dismyssyng at large of the said William
• Hyde. And also to ordeyne by the said auctorite, that your
• right and enteresse be saved in this behalf: and that the said
• John Marshall and Thomas Gay, and either of theym, have
• writte or writtes of execution in, of and for the premysses,
• after

“ after the dissolving of this present Parliament, as plenerly
 “ and effectually as if the said William Hyde at any tyme for
 “ any of the premisses never had been arested; the said ar-
 “ restyng of the same William and comitting of him to warde
 “ notwithstanding: Savyng alwey to your Commens called
 “ nowe to this your Parlement, and their Successours, their
 “ hooke Liberties, Fraunchises, and Priveleges, in as ample
 “ fourme and maner as your said Commens atte any tyme
 “ afore this day have had, used, and enyoied, and owe to have,
 “ use and enyoie, this present Acte and Petition in any wise
 “ notwithstanding.

“ *Responsio.* Le Roy le voet.

The only object which the Commons seem to have had in this application to the Crown was the release of their Member; for the law “ that a Member was not liable to be imprisoned “ for debt, sitting the Parliament,” had been too lately and too solemnly adjudged, for them not to know how grossly it had been violated in this instance: Mr. Hyde, however, being a prisoner in execution, it was necessary, as in the Case of Lark, N°. 8, and Clerk’s Case N°. 13, to have an Act of Parliament to save to the parties a right of a new Execution after the time of Privilege; but the Commons did not think it necessary to apply to the Crown for any redress for this breach of their Privilege; they had on a similar occasion received for answer from the King, v. N°. 6, “ that there was already “ sufficient remedy by law in these cases;” they therefore cautiously provide by their petition, that this application shall not be understood in the least to infringe their whole Liberties, Franchises, and Privileges.—It is, indeed, something extraordinary that, when all the twelve Judges had but two years before in two several instances adjudged, that a Member ought not to be imprisoned *ratione alicujus transgressionis,* debiti,

debiti, computi, conventus aut alterius contractus cujuscunque, yet when Mr. Hyde is brought up to the Court of King's Bench, that Court should remand him to Newgate, and not immediately order him to be set at liberty: This circumstance, added to the necessity which there appears to have been of indemnifying the Chancellour and Sheriffs against any prosecution at law for his escape, induces me to suspect that the opinion of the Judges, as delivered in the two former instances in the 12th Edward IV. was confined only to the case of persons entitled to Privilege of Parliament, who should be arrested and imprisoned on Mesne process, and that the right, which such persons had by law to Writs of Privilege and Habeas Corpus for their delivery, did not extend to persons imprisoned under a Writ of Execution; for, if it was otherwise, if Members and their servants had, when in execution for debt, a right by law to be released by a Writ of Privilege, or that the law then was, that such imprisonment was illegal, it is highly absurd to suppose that the Lord Chancellour, who was by his office to issue this writ, or the Sheriffs, who were bound to obey it, should, by their obedience to the law, make themselves liable to the prosecution of the creditor, as for the escape of his debtor, or that the law would not at the same time have provided for a renewal of the Writ of Execution; both which however, we see, were necessary to be specially declared by Act of Parliament*. This, therefore, I

* It has been suggested to me, that the observation on this Case is not settled with sufficient precision; it being of great importance to determine this question,—
“Whether the Superfedeas and Habeas Corpus, and consequently the real Privilege of the House of Commons, extended only to Arrests on Mesne Pro-

cess, or to Executions also?”—And that this is a point which a Commentator should settle.

To which I beg leave to answer, that the intention of this work is principally to produce the Cases, and to leave to others to settle the law which arises out of them.

I say,

say, makes me think that, at this time, the claim of Privilege of Parliament extended only to secure persons entitled to such Privilege from being arrested for trespass, debt, &c. on mesne process; and against such arrests the law gave the remedy of a Writ of Privilege, which released the person of the debtor, and did not affect the rights of the creditor; but from an arrest on a judgment, it appears, both from Lark's, and Clerk's Case, and the present, that there was, at this time, no other redress than a special Act of Parliament.

17. Three years after this, happened the Case of John Atwyll, Burges for Exeter, which is thus entered on the Parliament Roll *.

* Roll Parl. 17 Edw. IV. N°. 35.

‘ To the Kyng oure Sovereigne Lord, prayen the Comons
 ‘ in this present Parlement assembled, That, whereof tyme
 ‘ that mannys mynde is not the contrarie, it hath been used,
 ‘ that the Knyghtes of the Shires, Citezeins of Citees, Bur-
 ‘ gies of Burghes, and Barons of Five Portes, of this your
 ‘ reame, called to any of the Parlements of your noble pro-
 ‘ genitours, or your's, amonges other Libertiees and Fraun-
 ‘ chises, have had and used Pryvylege that eny of theym shuld
 ‘ not be empled in any action personell, nor be attached
 ‘ by their persone or goodes in their comyng to any such
 ‘ Parlement, there abidyng, nor fro thens to their propre home
 ‘ refortyng, which Liberties and Fraunchises your Highnes to
 ‘ your Lieges called by your auctorite roiall to this your high
 ‘ Court of Parlement for the Shires, Citees, Burghs, and Five
 ‘ Ports of this reame by your auctorite roiall, atte commense-
 ‘ ment of this Parlement graciously have ratified and confirmed
 ‘ to us youre said Comens nowe assembled by your said roiall

‘ commaundement in this your said present Parlement :—
‘ And it is so, Sovereigne Lord, that where oon John Atwyll,
‘ one of the Citezeins of the cite of Exeter, comen to this
‘ present Parlement, and here contynielly attendyng uppon
‘ the same sithen the commenfement therof, oon John
‘ Tayllour, callyng hym Merchaunt of the said cite of Exeter,
‘ by vertue of eight dyvers feyned enformations made in your
‘ Eschequer, hath condempned the said John Atwyll duryng
‘ this present Parlement, by the defaute of aunswere of the
‘ said John, in eight times 20l. the same John dayly attend-
‘ yng uppon the same Parlement, and not havynge knowe-
‘ lege of the said condempnations; uppon which condempna-
‘ tions dyvers and severall writtes been directed to dyvers
‘ Shirefs of this your reame, some of Fieri facias, and some
‘ Capias ad Satisfaciend’, so that the said John Atwyll may
‘ not have his free departyng from this present Parlement to
‘ his home, for doute that booth his body, his horses, and his
‘ other goodes and catalles necessarie to be had with hym,
‘ shuld be put in execution in that behalfe, contrarie to the
‘ Pryvilege due and accustomed to all the Membres usuelly
‘ called to the forseid Parlementes; Be it therefore ordeigned,
‘ by the advis and assent of the Lordes Spirituelx and Tem-
‘ porell in this present Parlement assembled, and by the auc-
‘ torite of the same, That the said Writtes of Executions, and
‘ every of theym, to be had uppon the same, in no wyse to be
‘ executour, nor hurtfull to the said John Atwyll, his heires
‘ nor executours, nor any of theym; and that the Chief
‘ Baron of the said Eschequer for the tyme beyng, have poiar
‘ by this ordenaunce to graunte withoute denyer, to the said
‘ John Atwyll, his heires and executours, and every of theym,
‘ such and als many Writtes of Superfedeas, uppon this or-
‘ denaunce,

• denaunce, to every such Shiref or Shirefs of this reame to be
 • directe, to surcesse of eny maner of execution, in that be-
 • halfe to be made or had, as to the said John Atwyll, his
 • heires and executours, and every of theym, shall be requi-
 • site: Savyng alwey to the forseid John Tayllour his forseid
 • jugementes and executions, and every of theym, to be had
 • and sued atte his pleasure ayenst the said John Atwyll at eny
 • tyme after the ende of this present Parlement, this orde-
 • naunce notwithstanding.

• *Resp.* Le Roy le voet.

There are several matters worthy of observation in this Re-
 cord. (1.) This is the first instance I have met with, in
 which the Commons themselves have claimed the Privilege of
 not being impleaded in any personal action, during the time
 of Privilege; it is also remarkable, that though they entirely
 supersede these Writs of Execution, as having been obtained
 contrary to their Privileges, yet they pray no redress for this
 so extraordinary a violation of them. (2.) There is another
 claim made by the Commons in this Petition, of which kind
 nothing has occurred since the Case of the Prior of Malton,
 N°. 5, in the ninth year of Edward II. above one hundred
 and sixty years before, viz. “ that of not being attach’d in
 “ their horses or necessary goods and cattales;” the King’s
 answer, however, being general, “ Le Roy le voet,” confirms
 this to have been the Law of Parliament; and as Prynne ob-
 serves, in the Fourth Register, p. 775, “ This was the judg-
 “ ment of the King, Lords, Judges, and Commons too in that
 “ age, that the Members Privilege extended to protect their
 “ persons, horses, and necessary goods, which they carry with
 “ them, from arrests and executions during the Parliament,

“and in coming to, and returning home from it.” (3.) * They here certainly declare, that it is contrary to the Privilege of Parliament, that the body of any Member should be put in execution, sitting the Parliament; and yet we have seen, in several foregoing instances, that, when this Privilege was broken, and the body of a Member was put in execution, sitting the Parliament, it was found necessary to make a special Act of Parliament for his release; which seems to imply that the common law had not in this instance provided any remedy for this right. (4.) They consider the prosecuting and obtaining these Writs of Execution, sitting the Parliament, so totally irregular, and against their Privileges, that they supersede the operation of them even in favour of Mr. Atwyll’s heirs and executors. And yet, (5.) They think themselves obliged, at the same time, to save to this creditor his right to sue these Judgments and Executions after the expiration of the Parliament.

18. Notwithstanding this formal claim by the House of Commons, of their Privilege of not being impleaded in any Personal Action, and that this claim was admitted by the Lords, and confirmed by the King, the next Case, which occurred within a very few years, and in which the defendant sets forth what he conceives to be the custom and law of Privilege of Parliament, omits this privilege of not being impleaded in Personal Actions. Indeed we have seen in the two former Cases, N°. 14 and 15, that when this was attempted to be introduced as law, the Barons of the Exchequer, supported by the opinion of the rest of the Judges, had disallowed it.

The Record is as follows †:

* See the Note Page 47.

† Prynne’s Fourth Register, p. 776.

Hil. 1. Hen. VII. Rot. 104. Reo v. Sadcliffe.

Et predictus H. venit, & dicit quod ipse est serviens familiaris Johannis Savage, Mil. unius Militum Com. Staff. qui ad Parliamentum Domini Regis nunc de mandato suo venit. Et dicit, quod secundum consuetudinem in regno ipsius Regis Angliæ hætenus obtentam et approbatam, Domini Magnates, et Milites Com. et Cives et Burghenses Civitatum et Burgorum ad Parliamentum ipsius Dom. Regis de summonitione sua venientes, aut eorum servientes et familiares ratione alicujus transgressionis, debiti, computi, conventionis aut alicujus contractus cujuscunque, dum sic in Parlamento predicto morentur, arrestari minimè debeant aut imprisonari. Et hoc paratus est verificare. Et profert hic in curia breve Domini Regis nunc Justic. suis hic directum, quod sequitur in hæc verba:

Henricus Dei gratiâ Rex &c. Justiciariis suis de Banco Salutem. Cum secundum consuetudinem &c. and then the writ recites the custom, as set forth before in the words of the plea; Vobis mandamus, quod placito illo supersedeatis, ipsum contra consuetudinem prædictam non molestantes in aliquo, seu gravantes.

Et super hoc, iidem Justiciarii viso brevi illo ac allegatione ipsius defend. plenius intellectâ, consideratum est quod prædictus defend. eat sine die &c.

It may, indeed, be said that it was not necessary to state in this writ any more of the custom than was absolutely sufficient for the particular situation of the defendant: Sadcliffe was arrested and imprisoned under Mesne Process; he only wanted to be released; it was, therefore, not incumbent upon him to set forth in the writ any thing of the custom of not being liable by the Privilege of Parliament to be impleaded; and

and that therefore the authority of this Case, with respect to no such custom's existing, is of no weight.

Hitherto we have seen, that when a Member, or his servant, has been imprisoned, the House of Commons have never proceeded to deliver such person out of custody by virtue of their own authority; but, if the Member has been in execution, have applied for an Act of Parliament to enable the Chancellor to issue his writ for his release, or if the party was confined only on Mesne Process, he has been delivered by his Writ of Privilege, which he was entitled to at common law. The next Case which occurs is therefore remarkable, as it introduces a new mode of proceeding in this particular:

19. In the Lent season, whilst the Parliament yet continued, one George Ferrers, Gentleman, servant to the King, being elected a Burgess for the towne of Plimmouth, in the county of Devon, in going to the Parliament House was arrested in London by a process out of the King's Bench, at the suit of one White, for the sum of two hundred Marks, or thereabouts, wherein he was late afore condemned, as surety for the debt of one Welden of Salisbury; which arrest being signified to Sir Thomas Moile, Knight, then Speaker of the Parliament, and to the Knights and Burgesses there, order was taken that the Serjeant of the Parliament, called S. J. should forthwith repair to the Counter in Bread-street, whither the said Ferrers was carried, and there to demand delivery of the prisoner. Thereupon the Serjeant, as he had in charge, went to the Counter, and declared to the Clerks there what he had in commandment; but they, and other officers of the City, were so far from obeying the said commandment, as, after
many

‘ many stout words, they forcibly resisted the said Serjeant,
‘ whereof ensued a fray within the Counter gates, between
‘ the said Ferrers and the said officers, not without hurt of
‘ either part, so that the said Serjeant was driven to defend
‘ himself with his mace of armes, and had the crown thereof
‘ broken by bearing off a stroke, and his man stricken down.
‘ During this brawle, the Sheriffs of London, called Rowland
‘ Hill and H. Suckley, came thither; to whom the Serjeant
‘ complained of this injury, and required of them the delivery
‘ of the said Burgeſs, as afore; but they bearing with their
‘ officers, made little account either of his complaint or of his
‘ meſſage, rejecting the ſame contemptuously, with much
‘ proud language, ſo as the Serjeant was forced to return
‘ without the priſoner; and finding the Speaker and all the
‘ Knights and Burgeſſes ſet in their places, declared unto
‘ them the whole cauſe, as it fell out; who took the ſame in ſo
‘ ill part, that they all together (of whom there were not a
‘ few, as well of the King’s Pryvy Counſel, as alſo of his
‘ Pryvy Chamber) would ſit no longer without their Burgeſs,
‘ but roſe up wholly, and retired to the Upper Houſe; where
‘ the whole Caſe was declared by the mouth of the Speaker,
‘ before Sir Thomas Audley, Knight, then Lord Chancellour
‘ of England, and all the Lords and Judges there aſſembled:
‘ who, judging the contempt to be very great, referred the
‘ puniſhment thereof to the order of the Commons Houſe.

‘ They, returning to their places again, upon new debate of
‘ the Caſe took order, that their Serjeant ſhould eſtſoon re-
‘ pair to the Sheriffs of London, and require delivery of the
‘ ſaid Burgeſs, without any writ or warrant had for the ſame,
‘ but only as afore: Albeit the Lord Chancellour offered there
‘ to grant a writ, which they of the Commons Houſe re-
‘ fuſed, being of a clear opinion, that all commandments and
‘ other

other acts proceeding from the Neather House, were to be
 done and executed by their Serjeant without writ, only by
 shew of his mace, which was his warrant. But before the
 Serjeant's return into London, the Sheriffs having intelli-
 gence how haynously the matter was taken, became some-
 what more milde, so as upon the said second demand they
 delivered the prisoner without any denial. But the Serjeant
 having then further in commandment from those of the
 Neather House, charged the said Sheriffs to appear person-
 ally on the morrow, by eight of the clock, before the Speaker
 of the Neather House, and to bring thither the Clerks of the
 Counter, and such other of their officers as were parties to the
 said affray, and in like manner to take into custody the said
 White, which wittingly procured the said arrest, in con-
 tempt of the Privilege of the Parliament. Which com-
 mandment being done by the said Serjeant accordingly, on
 the morrow, the two Sheriffs, with one of the Clerks of the
 Counter (which was the chief occasion of the said affray)
 together with the said White, appeared in the Commons
 House; where the Speaker charging them with their con-
 tempt and misdemeanor aforesaid, they were compelled to
 make immediate answer, without being admitted to any
 Counsell; albeit Sir R^o Cholmley, then Recorder of London,
 and other the Counsell of the City then present, offered to
 speak in the cause, which were all put to silence, and none
 suffered to speak but the parties themselves; whereupon
 in the conclusion the said Sheriffs, and the same White,
 were committed unto the Tower of London, and the said
 Clerk (which was the occasion of the fray) to a place there
 called Little Ease, and the officers of L. which did the ar-
 rest, called Bayley, with four officers more, to Newgate,
 where they continued from the 28th until the 30th of
 March.

“ March, and then they were delivered, not without humble
“ suit made by the Mayor of L. and other their friends.—And
“ forasmuch as the said Ferrers being in execution upon a con-
“ demnation of debt, and set at large by Privilege of Parlia-
“ ment, was not by law to be brought again into execution,
“ and so the party without remedy for his debt, as well against
“ him as his principal debtor, after long debate of the same by
“ the space of nine or ten days together, at last they resolved
“ upon an Act of Parliament to be made, and to revive the
“ execution of the said debt against the said Welden, which
“ was principal debtour, and to discharge the said Ferrers.

“ But before this came to pass, the Commons House was
“ divided upon the question: but in conclusion the Act passed
“ for the said Ferrers, who won by fourteen voyces.—The
“ King being then advertis'd of all this proceeding, called be-
“ fore him immediately the Lord Chancellour of England, and
“ his Judges, with the Speaker of the Parliament, and other
“ the gravest persons of the Neather House, to whom he de-
“ clared his opinion to this effect: “ First commending their
“ wisdom in maintaining the Privileges of the House (which
“ he would not have to be infringed in any point) alledged
“ that he, being head of the Parliament, and attending in his
“ own person upon the business thereof, ought in reason to
“ have Privilege for him, and all his servants attending there
“ upon him. So that if the said Ferrers had been no Bur-
“ gess, but only his servant, that in respect thereof he was to
“ have the Privilege, as well as any other. For I understand,
“ quoth he, that you, not only for your own persons, but also
“ for your necessary servants, even to your cooks and horse-
“ keepers, enjoy the said Privilege, insomuch as my Lord
“ Chancellour here present hath informed us, that he being
“ Speaker of the Parliament, the cooke of the Temple was
“ arrested

“ arrested in London, and in execution upon a statute of the
“ Staple. And forasmuch as the said cook during the Parlia-
“ ment served the Speaker in that office, he was taken out of
“ execution by the Privilege of the Parliament. And further,
“ we be informed by our Judges; that we at no time stand so
“ highly in our Estate Royal, as in the time of Parliament;
“ wherein we as Head, and you as Members, are conjoin’d and
“ knit together into one Body Politick, so as whatsoever of-
“ fence or injury (during that time) is offered to the meanest
“ Member of the House, is to be judg’d as done against our
“ Person and the whole Court of Parliament; which preroga-
“ tive of the Court is so great (as our learned Counsel inform-
“ eth us) as all acts and processees coming out of any other
“ inferior Courts, must for the time cease and give place to
“ the highest. And touching the party, it was a great pre-
“ sumption in him, knowing our servant to be one of this
“ House, and being warn’d thereof before, would nevertheless
“ prosecute this matter out of time, and therefore well wor-
“ thy to have lost his debt, which I would not wish, and
“ therefore do commend your equity, that, having lost the
“ same by law, have restor’d him to the same against him who
“ was the debtor; and this may be a good example to other,
“ not to attempt any thing against the Privilege of this Court,
“ but to take the time better.”—Whereupon Sir Edward
“ Montague, then Lord Chief Justice, very gravely declared
“ his opinion, confirming by divers reasons all that the King
“ had said, which was assented unto by all the residue, none
“ speaking to the contrary.’

Such is the history of this transaction, as related by Hol-
linghead, to have passed in the thirty-fourth year of the Reign
of Henry VIII. It is certainly very extraordinary, that every

Privilege, which has been in later times claimed by the House of Commons on the arrest of any of their Members, should be here insisted on and exercised, to as great an extent, in this first instance, as it has ever been since admitted by law to exist. (1.) First, the Member arrested was delivered, not by virtue of an Act of Parliament, though in execution, nor by any Writ of Privilege, but by the Serjeant, without any other warrant than his mace, even though the Lord Chancellor offered such a writ. (2.) The parties, who opposed his delivery, were imprisoned, by the House of Commons, some in the Tower, some in Newgate. (3.) The creditor himself, who procured the arrest, was also committed for his contempt of the Privilege of Parliament. And these powers, so exercised, though I have not found the least trace of any one of them in the foregoing instances, were admitted by all the Judges in England to be legal. It is said, indeed, in Moore's Reports *, that afterwards, in the sixth year of Queen Elizabeth, Dyer, when Chief Justice, said, " That if a man is condemned in debt or trespass, " and is elected a Member of Parliament, and then is taken " in execution, he cannot have the Privilege of Parliament; " and so it was held by the sages of the law, in the Case of " Ferrers, in the time of Henry VIII. Et coment que le " Priviledge a ceo temps fuit a luy allow, ceo fuit minus " just."—But Dyer himself citing this Case of Ferrers, in his Reports †, mentions it without blame.

There are, however, so many new and extraordinary circumstances attending this Case of Ferrers, that I own I am apt to suspect that the measures which were adopted, and the doctrine which was now first laid down with respect to the extent of the Privileges of the House of Commons, were more owing

* Page 57.

† Page 61.

to Ferrers's being a servant of the King's, than that he was a Member of the House of Commons. The King, in his argument in favour of Parliamentary Privilege, relies much upon this; and it is difficult to explain, why, if Ferrers had been considered only in the light of a Member, the Commons, in the Bill which they passed to restore to the creditor his debt against the principal, did not also revive it against the surety, agreeable to the principles both of Law and Equity, upon which they had acted in every former instance*. Prynne, in the Fourth Register†, very justly observes, that there were aggravating circumstances attending the manner of the arrest, which might provoke this extraordinary interposition of the House of Commons.—(1.) Ferrers was only security for the debt. (2.) He was arrested as he was actually going to the Parliament House. (3.) White, who procured the arrest, knew him to be a Member, and a servant of the King's.—The mode of interposition was however certainly new, and perhaps Lord Herbert judges right, when he supposes it gained the King's approbation, “that He, whose master-piece it was to make use of his Parliaments, might not only let foreign Princes see the good intelligence between him and his subjects, but might also keep them all at his devotion.”

20. Within two or three years after this very memorable Case, occurs that of Trewynnard, in the 36th and 37th Henry VIII. of which the Record is as follows ‡:

* The following observation was made by a friend, to whom I shewed the work before it was printed.—It is true they certainly had done so in former instances; but whether that was agreeable to the principles of Law and Equity, depends on the question, What was the real Privilege of Parliament in Cases of Execu-

tions?—If the Privilege did extend to Executions, those Acts in favour of the plaintiff were *ex gratia*, and might be made in what proportion the House thought proper for his benefit, under the particular circumstance of the Case.

† Page 859.

‡ Prynne's Fourth Register, p. 780.

* Hil. 36 Hen. VIII. Rot. 39. in Ban. Regis.

* Laurence Courtney and Richard Tomyewe, executors of
 * John Skewes, Esq; brought an action of debt against Ri-
 * chard Chamond, Esq; late Sheriff of Cornwall, for 74l. 15s.
 * pro eo, viz. quod cum prædictus Johan. Skewes in vita sua
 * prosecutus est quoddam Breve Dom. Regis Vice Comiti dicti
 * Comit. Cornubiæ directum, et coram Justiciariis dicti Dom.
 * Regis de Banco retorn. recitans quod idem Vice Comes præ-
 * ciperet Willo. Trewynnard, quod reddat prædicto Johanni
 * Skewes, 75l.—After a long recital of the proceedings, and of
 the judgment given against Trewynnard for the rent due,
 and his damages.—Postea, scilicet præceptum fuit per Breve
 * Dom. Regis Vic. Cornub. quod exegi faceret prædict. Wil-
 * lielmum Trewynnard, quousque secundum legem et consue-
 * tudinem Angliæ utlagaretur, si non comparuisset, et si com-
 * paruisset, tunc eum caperet et in prisona salvo custodiri face-
 * ret.—On 12th November after, * Will. Trewynnard, quinto
 * exactus, comparuit, & se reddidit Vice Com. Cornub.—
 And that, afterwards, the said Trewynnard being then in cus-
 tody of the Sheriff, on the 20th of March the said Richard
 Chamond let the said Trewynnard go at large, without satis-
 fying the said Skewes (then alive) in his rent and damages.—
 To this Richard Chamond pleads, that the said executors
 ought not to have their action against him, because that the
 said William Trewynnard being, as stated, in his custody,
 he received the King's Writ on the 21st day of February,
 directed to the Sheriff of the county of Cornwall, in these
 words :

* Henricus Octavus, Dei gratiâ Rex &c. Vic. Cornub. Sa-
 * lutem. Cum secundum consuetudinem in regno nostro An-
 * glia hætenus obtentam et approbatam, Domini Magnates,

et Milites Comitatum, ac Cives et Burgenſes Civitatum et
Burgorum ad Parliamenta noſtra de ſummonitione noſtra ve-
nientes, ſeu venire intendentes, aut in eiſdem circa ardua ne-
gotia ſtatum et utilitatem regni noſtri prædicti concernentia
attendentes, ſub protectione noſtra liberi et quieti de omni
arrestatione aut imprisonamento corporum ſuorum ratione
alicujus transgreſſionis, debiti, computi, conventionis, aut
alicujus alterius contractûs cujuſcunque eſſe debeant, ac tem-
poribus retroactis conſueverunt: Ac jam ex querela dilecti
noſtri Willielmi Trewynnard unius Bergenſium Villæ ſive
Burgi noſtri de Helſtone, in comitatu Cornubiæ prædicto, ac-
cepimus, quod ubi ipſe ad præſens Parliamentum de ſummo-
nitione noſtra venire intendiſſet et parâſſet: tu tamen ad hoc
conſiderationem non habens, præſatum Willielmum virtute
cujusdam Brevis noſtri de exigend. verſus ipſum Willielmum
ad proſecutionem cujuſdam Johannis Skewys extra Curiam
noſtram ad placita coram nobis tenend. remanent, ſub ar-
reſto ac in priſona detines, ut dicitur, ita quod ad Parlia-
mentum noſtrum prædictum venire non poteſt, in ipſius
Willielmi dampnum non modicum et gravamen, et contra
conſuetudinem ſupradictam. Tibi præcipimus, quod ſi ita
eſt, tunc ipſum Willielmum dearreſtari, et a priſona qua, ea
occaſione, ſeu alia occaſione quacunque, contra conſuetudi-
nem ſupradictam detinetur, ſine dilatione deliberari facias.
' Teſte meipſo apud Weſtm. 22 die Febrⁱⁱ anno regni
noſtri 35.'

By virtue of which Writ of Privilege, afterwards, on the
20th of March, Chamond pleads that he delivered Trewyn-
nard, and ſuffered him to go at large.—Unde petit judicium
ſi prædicti Laurentius et Ricardus actionem ſuam habere de-
beant. To this plea the plaintiffs demur.—Prynn, in the
Fourth

Fourth Register *, says there was no Judgment or Resolution of the Court entered in the Record; and Dyer, who reports the Case, says †, *Quære sequelam hujus placiti*.—I should not, therefore, have taken any notice of this Case, but in order to introduce what Dyer, who appears to have argued the point as Counsel for the Sheriff, has said upon it in his Reports ‡.

“ And there are three matters to be considered in this Case:

“ (1.) Ou le privilege soit grantable, en ce cas, pur un Bur-

“ gess de Parlt. esteant arrest sur le brē dexeē. (2.) Item, Si

“ le privilege soit grantable, ou le partie per cē enlargement

“ ferra clere dischargē dexeē a tous jours enūs le partie, ou

“ forsque pur le temps del Parliament. (3.) Item admit que le

“ privilege nest allowable en le case, unē ou le vic per cest brē

“ et garrant del Roy, precedant del Parliament, ferra sufficient

“ excuse et discharge vers le partie pltf del debt.—Et al prim.

“ il semble le privilege allowable, car quand les Membres sont

“ returne, lour parsonal attendance est cy necessary al Parlia-

“ ment, que ils ne doient pur ascun business estre absents, et

“ doncques il ensua que le person de chescun tiel Member

“ doiet estre privilege d'arrest al fuit d'ascun private person,

“ durant cel temps que il est embusied entor les affaires del

“ Roy et son realme. Et tiel privilege ad estre tous foits

“ graunt per le Roy a ses Commoners, al request del Prolocu-

“ tor del Parliament le primer jour &c. Donqs common rea-

“ son voit que' entant que le Roy et tout son realme ad un

“ interest en le corps de chescun des dits Members, il semble

“ que le private commoditie de ascun particulier homme ne

“ doiet estre regard, car est un maxime, qd' magis dignum

“ trahit ad se minus dignum, issint est a conclude que cest

“ Court de Parliament est le plus haut Court, et ad plusors

* Page 789.

† Page 61.

‡ Page 59.

“ privileges

“ privileges que ascun autre Court del realme; per que sem-
 “ ble, que en chescun case sans ascun except, chescun Burges.
 “ est privilege, quant larrest nest forsque al fuit dun subject :
 “ Et le case icy est melior, entant que executⁿ fuit fue durant
 “ le Parliament, en quel case le pliff fuit al election de fuer
 “ execution de son corps, ou de ses terres et biens. Et auxi
 “ chescun privilege est per prescription, et chescun prescrip-
 “ tion que sound al common weale est bon, coment que il soit
 “ prejudice a ascun private person.—Al second matter; il
 “ semble que le party nest discharge dexecution a tous jours,
 “ mes pur certain temps, car il nest impertinent mesque un
 “ judgement poit un foits estre executed, et auterfoits execu-
 “ torie.—Et al tierce, Semble que le Vicont nest chargeable :
 “ Et mittomus que le Vicount ust disobey ceste briefe, quel
 “ damage esteroit il ? Verament endaunger de perjury, et auxy
 “ de imprisonment de son corps, et raunsome al volunt le
 “ Roy : et ceo fuit en ure en mesme le Parliament vers Row-
 “ land Hill et Suckley, les Viconts de Londres, queux fue-
 “ rent commit al Tower pur lour contempt, pur ceo que ils
 “ ne voile lesser George Ferris, que fuit arrest sur un execu-
 “ tion, d’aler a large, quant les Serjeants del Armes vient pur
 “ luy sans ascun briefe. Et il appiert pleinement per le
 “ briefe, que ils fuerent clere en le Parliament que le partie
 “ duist aver le privilege en cest case, car auterment le briefe
 “ ferroit forsque Habeas Corpus cum causa, quel brief est
 “ souvent foits graunt devaunt ceo que les Justices sont agrees :
 “ le quel le privilege gist en le case ou nemy, et fils trove
 “ que nest grauntable en le case, doncques ils remaund le mat-
 “ ter ove procedendo &c. per que &c. coment que le Parlia-
 “ ment erra en le graunt del briefe, uncore ceo nest reversible
 “ en auter Court, ne ascun default en le Vicont, per que.”

We must remember, in reading this Report, that Dyer was not at this time pronouncing the law as a Judge, but arguing in support of his client; and therefore, as it was his duty to lay down the extent of Privilege of Parliament as large as possible, it may fairly be concluded, that the law of Privilege was at this time confined within the limits that he has here described. This consideration may excuse me for presuming to differ from so great an authority with respect to his opinion on the second point, viz. "That the party was discharged from the Execution only for a certain time." All the preceding Cases, confirmed by the subsequent statute of James I. shew that the law was otherwise, and that the Writ of Execution, when executed, could not be revived but by Act of Parliament.

It should seem, from the concluding words of the Report, that this Writ of Privilege was directed to be issued by an Order of the House of Commons; and though nothing appears in the Record to justify this supposition (nor has any thing of this sort yet occurred in any of the former instances) we shall see that, within a very few years, this idea was adopted by the House of Commons; and it was established, that no person should apply for a Writ of Privilege without a warrant for that purpose first obtained from the Speaker.—It appears, from the dates of the proceedings in this business, that this Session of Parliament began on the 14th of January; that Trewynnard had surrendered himself on the 12th of November preceding; that the Writ of Privilege was issued on the 22d of February; and that he was not delivered out of prison till the 20th of March. Why then did the House of Commons, who had so lately been alarmed, and proceeded in so extraordinary a manner on the imprisonment of Ferrers, suffer this Member to
continue

continue in custody above two months after their meeting? Perhaps his being in custody at the commencement of the Session, on a judgment issued during a very long prorogation, might, in their opinion, distinguish this case from that of a Member arrested as he was coming to the Parliament House; or perhaps, as I have suggested before, they would not have acted as they did in the case of Ferrers, if he had not been a servant of the King, and if, for that reason, the affront had not been considered by the King's Privy-Counsellors, and those of his Privy Chamber, of whom there were not a few, as offered to the King himself.

These twenty Cases, though perhaps there may be many more, are all that I have met with, prior to the Reign of Edward VI.

And here it may not be disagreeable to the Reader to stop for an instant, and to endeavour to collect from these instances, what was the more ancient doctrine of the extent of Privilege of Parliament, as claimed by Members of the House of Commons.

First, It has hitherto been confined expressly to the Members themselves, and to their servants, "familiares," waiting on them during their attendance in Parliament.

Secondly, It has not been extended, in point of duration, beyond the time of their coming to Parliament, their residing there, or returning to their homes; except in the Writ of Privilege sued out in the last Case of Trewynnard, which was to persons "venientes seu venire intendentes."

Thirdly, No Case has occurred where the suit or prosecution, against the person claiming Privilege, has been for any

K

"other

other than a civil cause, “transgressionis, debiti, computi, conventionis, aut alterius contractus cujuscunque.” Indeed, in Lark’s Case, in the year 1430, the Commons state their Privilege “to be free from all arrests, except for treason, felony, or surety of the peace;” and in Thorpe’s Case, in 1456, the Judges declare, “that if any Member of Parliament be arrested in such Cases as be not for treason, or felony, or surety of the peace, or for a condemnation had before the Parliament, it is used that all such persons should be released of such arrests, and make an attorney, so that they may have their freedom, and liberty freely to intend upon the Parliament.” But in neither of these Cases, nor in any other that we have yet met with, is there any proceeding, to explain the precise meaning of these words “Surety of the Peace*,” or to shew how far they were then understood to extend to indemnify persons, entitled to Privilege of Parliament, from any species of criminal prosecution.

Fourthly, Though the claim of personal Privilege, or of being free from arrests in civil suits, is general, I cannot, as I said before, but suspect, as well from the expressions used by the Chief Justice, in delivering the opinion of the Judges in Thorpe’s Case, “condemnation had before the Parliament,” as from other circumstances, that originally it was understood to extend only to persons arrested on mesne process, and not to those taken in execution; and I am supported in this opinion, by the argument, which arises from the remedy pro-

* In a Resolution of the House of Lords, of the 18th April 1626, their Privilege is thus expressed: “Resolved, *nemine dissentiente*, That no Lord of Parliament, sitting the Parliament, or within the usual times of Privilege of Parliament, is to

“be imprisoned or restrained, without sentence or order of the House, unless it be for treason, or felony, or for refusing to give surety for the peace.” See Lord Arundel’s Case, in this Vol. Ch. 3. N^o 8.

vided by the Common Law for the delivery of persons arrested on mesne process, viz. "a Writ of Privilege;" whereas in the other case, we have seen that it was thought necessary to apply for a special Act of the Legislature, not only to enable the Chancellor to issue his writ for the release of the Member so taken in execution, but even to indemnify him for the issuing that writ, and the sheriffs and other ministerial officers for obeying it. And, when the Judges say, in Thorpe's Case, "that the person arrested is to be released and to make his attorney," this seems to imply that he is to be released only on some process prior to the final judgment; for to a judgment I apprehend the party could not answer by his attorney, but, if he does not satisfy the debt and costs, must suffer in his proper person.

Fifthly, The only Cases I have hitherto met with, which seem to imply a Privilege, that the goods of a Member shall not be taken in execution, are (1) That of the Master of the Temple, N° 1. (2) The Case of the Prior of Malton, N° 5. (3) Atwyll's Case, N° 17. And this last is the only one that relates to Members of the House of Commons; and in the two latter of these Cases, the claim is expressly confined to such goods and chattels, as it was necessary the Member should have with him during his attendance in Parliament, or in returning to his home.

There is an expression in Dyer's Argument in Trewynnard's Case, from which one may collect that it was his opinion, "that the lands or even goods of a Member were liable to execution, even during the sitting of Parliament;" for he says, "Et le Case icy est melior, entant que Execution fuit sue durant le Parliament, en quel case le Plff. fuit al Elec-

“tion de fuer Execution de son corps, ou de ses terres et
“biens.”

Sixthly, The last species of Privilege which may be collected from any of the foregoing Cases, is, that of not being impleaded during the attendance in Parliament. I have observed before, that, except the Case of Bogo de Clare, N° 2. and the Writs of Superfedeas, N° 3. cited by Sir Edward Coke, nothing appears in favour of this claim till the two Cases in the Exchequer, N° 14. and 15, in the year 1474: in which the Barons, assisted by the rest of the Judges, declare that no such custom did then exist. In Atwyll's Case, 17 Edward IV. where the Commons, for the first time, insist on the Privilege of not being impleaded in any personal action, though they complain that the judgments obtained against Atwyll were on feigned informations, he being then attending in Parliament, and not having knowledge of the said condemnations, yet, notwithstanding this irregularity, so subversive of their Privileges, and indeed so contrary to the principles of natural justice, they think themselves bound to save to the creditor his right to a judgment, and new executions, to be sued after the conclusion of the Parliament.

Seventhly, We have seen in these several instances the different modes, by which persons, who have been arrested on imprisoned, have been released from their confinement. In the Cases of Lark N° 8. of Clerk N° 13. and of Hyde N° 16. which were of persons taken in execution after judgment, no Writ of Privilege appears to have been applied for, but the Commons went by petition to the King, and obtained a special Act of Parliament for their release. In Sadcliffe's Case N° 18. where the Defendant was arrested on mesne process,

a Writ of Privilege issued, under which he was set at liberty by order of the Court. It does not appear that any judgment was ever given in the Case of Trewynnard N^o 20. from whence one might have collected, how far the Sheriff was justified, by law, in obeying that Writ of Privilege, which issued to release a Member then a prisoner in execution. The only instance in which we have seen the House of Commons interpose by their own authority, and deliver their Member without the assistance of a Writ of Privilege, or of an Act of Parliament, is that of Ferrers; and of this, and the several circumstances attending it, having before given my opinion, I shall leave it to the judgment of the Reader.

CHAP. II.

FROM THE REIGN OF HENRY VIII. TO THE END OF
THE REIGN OF QUEEN ELIZABETH.

WE are now come to a period from which the original Journals of the House of Commons are extant; though, during the reigns of Edward VI. Queen Mary, and Queen Elizabeth, the entries are short and imperfect, and for some years, at the end of the reign of the latter of these monarchs, the Journals themselves are missing. I do not mean to insert, in the future progress of this work, every instance that is to be found of Privilege claimed or allowed, especially where there are, as in the more common complaints of breach of Privilege, several entries of the same sort: I shall confine myself to those Cases which appear to me the most interesting, and these I shall dispose in the order of time in which they happened.

21. On the 14th of January 1548, the Privilege of the House is granted to John Keyfar, servant to Sir Ralph Vane*. On the 7th of February 1548, it is ordered, That J. S. servant to Sir A. Wyngfylde, shall have a Writ of Privilege†.—And there are several other similar instances in the reigns of Edward VI. and Queen Mary, of Privilege allowed to the servants of Members.

* See the 21st January 1548,

February 1552; the 24th February 1552;

† See the 18th January 1549; the 19th

and the 15th November 1553.

22. On

22. On the 22d of February 1552, it is ordered, ' That
' if any Burgeſs require Privilege for himſelf, or his ſervant,
' (he) ſhall, upon declaration, have a warrant ſigned by Mr.
' Speaker to obtain the Writ.'—And, ' For that William
' Ward, Burgeſs of Lancaſter, obtained a Writ of Privilege
' out of the Chancery, without a warrant from this Houſe;
' it is committed to Mr. Maſon, and others, to examine the
' matter, and certify.' We have ſeen before, in Dyer's Ar-
gument in Trewynnard's Caſe, ſome alluſion to a practice of
this kind, viz. " the obtaining the previous conſent of the
" Houſe to an application for a Writ of Privilege." Upon
what grounds the Houſe of Commons took this power into
their hands, I will not pretend to decide; it is certain that the
Speaker's Warrant could not be, in all Caſes, neceſſary, as the
duration of Privilege, and conſequently the legal right of the
party entitled to a Writ of Privilege, extended even beyond
the exiſtence of the Parliament itſelf.

23. On the 18th of March 1552, it is ordered, ' That
' Hugh Fludde, ſervant to Sir A. Wyngfylde, ſhall have Pri-
' vilege.' On the 26th a Supplication is exhibited by John
Gurdon, Frenchman, to undo the Privilege granted to Hugh
Fludde, ut ſupra: On the 28th it is ordered, ' That a Pro-
' cedendo ſhall be directed to ſet Hugh Fludde without the
' Privilege of this Houſe, as he was before, and the Serjeant
' to deliver him priſoner to the Sheriffs of London; on the
next day, ' where the Serjeant delivered H. Fludde to a Ser-
' jeant of London, he made an aſſault upon that Serjeant, and
' eſcaped out of his ward; whereof, by credible report made
' to this Houſe, it is ordered, that the Serjeant ſhall require
' Mr. Comptroller to ſend to this Houſe, to-morrow by eight
' o'clock, H. Fludde, and - - - - - Creketofte, to know the
' further

‘ further pleasure of the House. On the 30th, Mr. Comp-
 ‘ troller did send Fludde and Cryketoste to the House, where-
 ‘ upon was declared by the Sheriffs Serjeant, the misde-
 ‘ meanour and escape of Fludde, by the means of Cryketoste;
 ‘ whereupon it is ordered that Fludde and Cryketoste shall
 ‘ be sent prisoners to the Gatehouse till to-morrow.—On
 ‘ the morrow, the 31st of March, it is ordered, that H.
 ‘ Fludde shall be remitted to the Counter of London,
 ‘ in such case as he was before the Privilege granted
 ‘ by this House unto him, and if Fludde shall agree
 ‘ with Gurdon, that notwithstanding, to abide the order of
 ‘ this House, if it be sitting; and if not, then to abide
 ‘ the order of the King’s Majesty’s Council, for the punish-
 ‘ ment of this demeanor, when it shall be ordered. For
 ‘ Cryketoste, it is ordered that he should remain in ward,
 ‘ where he was, and to bring him hither to-morrow at 10
 ‘ o’clock; and it is ordered, that two Members shall make
 ‘ report to Mr. Comptroller of the misdemeanour of Fludde
 ‘ and Cryketoste: On the next day, it is ordered, that
 ‘ Cryketoste shall be sent prisoner to the Tower, by the
 ‘ Serjeant of this House: On the 5th of April he is ordered to
 ‘ be discharged of the imprisonment, paying his fees. On
 ‘ the 15th of April, the day of the dissolution of the Parlia-
 ‘ ment, it is ordered, that Hugh Fludde, prisoner in the
 ‘ Counter, shall so remain until he have satisfied or agreed
 ‘ with John Gurdon, and that then the said Fludde shall be
 ‘ delivered to the Serjeant of this House, and discharged of
 ‘ his imprisonment there, notwithstanding any other action
 ‘ brought against him in London, sithence his first arrest
 ‘ for this matter.’—Mr. Prynne, in the Fourth Register, p.
 1202, says, that “ this is obscurely entered, but that it clearly
 “ implies, that Fludde was arrested and imprisoned in the
 “ Counter,

“Counter, at the suit of Gordon, either upon an execution,
 “or for some high breach of the peace, and misdemeanour
 “against him, of which when the House understood the
 “truth, though they had granted him his Privilege, they
 “recommitted him prisoner to the Counter in the same state
 “as before, till he had satisfied Gordon.”—I have entered the
 Proceedings in the Journal at length, in order that the Reader
 may be able to collect, as clearly as Mr. Prynne, for what cause
 Fludde was originally arrested, and why the Privilege allowed
 him was withdrawn. It may not be here improper to take notice
 of the punishments which the House inflicted on Creketoste
 (for his contempt and breach of their Privileges in assisting
 Fludde to make his escape from the Sheriffs, to whom they
 had remanded him) by first committing him to the Gatehouse,
 and then to the Tower; because it is the first instance that
 has occurred, except in the Case of Ferrers, in which the
 House of Commons have taken occasion themselves to punish
 a violation of their own privileges.

24. On the 17th of April, 1554, ‘Mr. Rede and Mr. Erm-
 ‘stead brought from the Lords a Subpœna, that Mr. Bea-
 ‘mond, of this House, and his wife caused to be served upon
 ‘the Earl of Huntingdon, in this Parliament time, and
 ‘prayer the order of this House, for that offence:—It is or-
 ‘dered, that eight of this House shall declare to the Lords,
 ‘that they take this Writ to be no breach of Privilege.’
 Neither Mr. Prynne, nor the compilers of the Parliamentary
 History, who both cite this Case, attempt to give any account
 of the transaction, either out of what Court the Subpœna
 issued, for what purpose it was served, or of what nature the
 suit was in which this process was used.

25. On the 23d of April, 1554, ' William Johnson, one of
 ' the Burgesſes, complained upon Monyngton, who had beaten
 ' him, and put him in fear of his life: Whereupon Monyng-
 ' ton came to this Houſe, and not knowing Johnson to be a
 ' Burgeſs, confeſſed he had ſtricken him, for that he took
 ' away a net out of Mr. Bray's houſe in Bedfordſhire, and
 ' Johnson ſaid it was Lord Mordaunt's net, and as Under-
 ' Sheriff he took it; whereupon it was ordered, that Mo-
 ' nyngton was ſent priſoner to the Tower. — On the next
 ' day, it is ordered, that the Serjeant ſhall fetch Monyngton
 ' from the Tower to this Houſe; whereupon Johnson re-
 ' quired that he might go ſafe in body, and that was com-
 ' mitted to Mr. Higham and Mr. Pollard; and thereupon
 ' Monyngton diſcharged.'

26. On the 20th of November, 1555, it is ordered, ' that
 ' Tuffard, who cauſed Mr. Mynne to be arreſted, ſhall
 ' pay the Serjeant's fees and withdraw his action.'

27. On the 6th of December, 1555, it is ordered, ' that
 ' Mr. Comptroller, with other of the Houſe, ſhall declare to
 ' the Lords, that their opinion is, that their Privilege is
 ' broken, for that Gabriel Pledall, a Member of this Houſe,
 ' was bound in a recognizance in the Star Chamber to ap-
 ' pear before the Council, within twelve days after the end
 ' of this Parliament: — Whereupon Mr. Comptroller, from
 ' the Lords, ſaid, that they would ſend answer thereof to the
 ' Houſe: — Mr. Marten and Mr. Lewis, from the Lords,
 ' ſaid, they required fix of the Houſe to confer with the Lords,
 ' for that cauſe; and Mr. Comptroller, Mr. S. Petre, with four
 ' others, went up: and they reported, that the Chief Juſtices,
 ' Maſter of the Rolls, and Serjeants, do clearly affirm that the

‘recognizance is no breach of the Privilege.’ It does not appear upon what grounds the Judges formed this opinion; whether upon the nature of the suit in which the Member was bound to appear, or upon the length of time after the dissolution of the Parliament; nor do I understand for what reason the Commons made any application to the Lords in this instance.—This conference was on Friday, and on Monday the Parliament was dissolved; so that we have no opportunity of knowing how far the Commons acquiesced in this doctrine.

28. On the 29th of January, 1557, ‘Thomas Eymis, Burgess for Thuske, complained, that a Subpœna was delivered to him to appear in the Chancery, wherefore he required the Privilege of this House: whereupon Sir Clement Higham and Mr. Recorder were sent to the Chancery, to require that the process might be revoked.’ This demand it is probable the Chancery complied with, as the Session continued till the 7th of March, and no further entry appears upon the subject.

29. On the 5th of February, 1557, ‘A Committee is assigned to examine a matter against Walter Rawley, a Burgess complained of out of the Admiral Court by Dr. Cooke’s Letter:—And on the 8th of February, ‘Walter Rawley, one of the Burgesses for the Borough of Wareham, attached in the Admiral Court, hath a Warrant to obtain a Writ of Privilege.’

We are now come to the Reign of Queen Elizabeth; and it appears from the Journals of the House of Commons, that Sir Thomas Gargrave, who was elected Speaker in Her first Parliament, did, on his being presented to the Queen, make

certain petitions for the ancient Liberties of the Commons, which were granted by Her Majesty to be used reverently and decently; but it is not there stated what these Liberties were. Sir Simonds Dewes, in the speech he has given us of Sir Thomas Gargrave, expresses them as follows *: “ (1.) Liberty of Access
 “ for the House to Her Majesty. (2.) Pardon for himself, if
 “ he should mistake or misreport any matter that he was or-
 “ dered to declare. (3.) That they might have Liberty and
 “ Freedom of Speech. And, (4.) That all the Members of
 “ the House, with their servants and necessary attendants,
 “ might be exempted from all manner of Arrests and Suits
 “ during the continuance of the Parliament, and the usual
 “ space both before the beginning, and after the ending there-
 “ of, as in former times hath always been accustomed.”—As
 I did not recollect to have hitherto met with any instance of
 Members’ servants claiming an Exemption from Suits, I own
 this petition of Sir Thomas Gargrave appeared to me rather
 extraordinary, till I found an explanation of it in the words of
 Sir Simonds Dewes himself, who says, p. 43, “ This Ex-
 “ emption from Suits at Law I have caused to be inserted into
 “ the preceding Abstract of Sir T. Gargrave’s Speech, be-
 “ cause he either did petition for Freedom from Suits, as well
 “ as for Freedom from Arrests, or he ought to have done it :”
 and then refers, for his authority, to the two aforementioned
 General Writs of Superseas, in the eighth year of Edward II.
 N° 3.

I trust it will not be thought an improper digression from
 my subject to remark here, that it is said by Elfyng, p. 176,
 and by Sir Simonds Dewes, p. 42, and is also mentioned in

* See Sir Simonds Dewes’s Journal, p. 16.

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the List of Speakers Names, published by Hakewill, p. 212,
 “ That the request for Access unto his Majesty is first recorded,
 “ in the twenty-eighth year of Henry VIII. to be made by
 “ Richard Riche, Speaker; but that the Speaker’s petition
 “ for Freedom of Speech is not recorded before the thirty-
 “ fourth Henry VIII. when it was made by Thomas Moyle,
 “ Speaker.” Hakewill, in page 213, says, “ The petition
 “ for Privelege from Arrests is of latter days; but it appears,
 “ in the first Henry IV. that Sir J. Cheney, then Speaker,
 “ made a general request that the Commons might enjoy their
 “ antient Privileges and Liberties, not naming any Liberty in
 “ particular; and he is noted to be the first that made this re-
 “ quest.” Elsyng, p. 184, says, “ This petition for Free-
 “ dom from Arrests was never made until of late years, yet this
 “ Privilege did ever belong to the Lords and Commons, and
 “ to their servants also, coming to the Parliament, staying
 “ there, and returning home *.” In a debate upon this subject,
 on the 17th of December, 1621, Mr. Hakewill says, “ The
 “ prayer for these Privileges, in the beginning of Parliaments,
 “ is a matter of good manners, never used till of late years:
 “ Antiently, protestations were made by the Speaker in
 “ this point: The first prayer was in the first year of
 “ Henry IV †.” This debate had arisen on a letter sent by

* It appears from the preamble to the
 Petition of the Commons in Atwyll’s Case
 (vide page 48.) “ that, at the commence-
 “ ment of the Parliament of 17th Ed-
 “ ward IV. the King ratified and con-
 “ firmed to the Commons their Privilege
 “ of not being impleaded in any action

“ personal, or of being attached by their
 “ persons or goods, &c.” This must prob-
 ably have been in his answer to the
 Speaker’s petition, and if so, this observa-
 tion of Elsyng is not accurately true.

† See Vol. I. Commons Journal,
 p. 667.

“ James

“ James I.* to be communicated to the House of Commons, in
 “ which, speaking of their Privileges, he says, “ We could not
 “ allow of the style, calling it *their antient and undoubted Right*
 “ *and Inheritance*; but could rather have wished that they had
 “ said, their Privileges were derived from the grace and per-
 “ mission of our ancestors and us; (for most of them grow
 “ from precedents, which sheweth rather a toleration than
 “ inheritance;) the plain truth is, we cannot with patience
 “ endure our subjects to use such anti-monarchical words to
 “ us concerning their Liberties, except that they had sub-
 “ joined, that they were granted to them by the grace and
 “ favour of our predecessors.” This very monarchical mes-
 sage immediately produced a violent spirit in the House, and a
 Committee of the whole House was appointed to meet the
 next morning, “ to consider all things incident to, or con-
 “ cerning the Privileges of the House.” Accordingly, the
 next morning, the 18th of December, the Committee met, and
 having, by the assistance of Sir Edward Coke, Mr. Noy, and
 Mr. Glanville, prepared the following Protestation, it was
 reported to the House, and, having been read several times,
 was, upon the question, allowed, and ordered to be presently
 entered of Record in the Journal of the House: It was ex-
 pressed in these terms;

“ The Commons, now assembled in Parliament, being justly
 “ occasioned thereto concerning fundry Liberties, Franchises,

* See the King's letter, dated from Newmarket, December 11th, 1621. — vert, dated from Royston, 16th Decem-
 ber, 1621, in 2d Vol. of Proceedings
 Parliamentary History, Vol. V. p. 497. and Debates of the House of Commons
 And another letter to Mr. Secretary Cal- in 1620-1, p. 339.

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‘ and Privileges of Parliament, amongst others not herein
‘ mentioned, do make this Protestation following; That the
‘ Liberties, Franchises, Privileges, and Jurisdictions of Parlia-
‘ ment, are the antient and undoubted birthright and inhe-
‘ ritage of the subjects of England; and that the arduous
‘ and urgent affairs concerning the King, State, and the De-
‘ fence of the Realm, and of the Church of England, and
‘ the Making and Maintenance of Laws, and Redress of Mis-
‘ chiefs and Grievances, which daily happen within this realm,
‘ are proper subjects and matter of counsel and debate in Par-
‘ liament: And that, in the handling and proceeding of those
‘ businesses, every Member of the House hath, and of right
‘ ought to have, Freedom of Speech to propound, treat, rea-
‘ son, and bring to conclusion the same: And that the Com-
‘ mons in Parliament have like Liberty and Freedom to treat
‘ of those matters in such order, as in their judgments shall
‘ seem fittest: And that every such Member of the said House
‘ hath like Freedom from all Impeachment, Imprisonment, or
‘ Molestation (other than by censure of the House itself) for
‘ or concerning any Bill, speaking, reasoning, or declaring of
‘ any matter or matters touching the Parliament, or Parlia-
‘ ment business: And that, if any of the said Members be com-
‘ plained of, or questioned for any thing done or said in Par-
‘ liament, the same is to be shewed to the King, by the advice
‘ and assent of all the Commons assembled in Parliament, be-
‘ fore the King give credence to any private information.”—

This Protestation accorded so ill with the King’s ideas of the
Liberties of the Commons, that he soon after sent for the
Journal Book, and, in Council, with his own hand rent it out;
and by a memorial of the 30th of December, which he ordered
to be entered in the Council Book, “ His Majesty did, in full
“ assembly of his Council, and in the presence of the Judges,

“ declare

“ declare the said Protestation to be invalid, annull’d, void, “ and of no effect :” and not long after dissolved the Parliament.—But notwithstanding all the pains taken by this simple King to obliterate this glorious monument of the spirit and wisdom of those great men who directed the councils of that memorable Parliament of 1621, this Protestation is still happily preserved, and remains a proof of the temper and moderation of that wise House of Commons, who had been so frequently provoked by attempts on their Liberties by an injudicious and conceited Monarch *.

Perhaps I ought to make an apology to the Reader, for having inserted this Protestation, and the Proceedings relating to it, out of the order of time in which they happened ; but I was led to do it from the reference which they bore to the subject of Sir Thomas Gargrave’s speech. — To return however to the precedents :

30. On the 24th of February, 1558, ‘ John Smith, returned Burgeſs for Camelford, upon a declaration by Mr. ‘ Maſh, that he had come to this Houſe, being outlaw’d, ‘ and alſo had deceived divers Merchants in London, taking ‘ wares of them to the ſum of three hundred pounds, mind- ‘ ing to defraud them of the ſame, under the colour of Privi- ‘ lege of this Houſe; the examination whereof, committed to ‘ Sir Jo. Maſon, and other of this Houſe, was found and ‘ reported to be true ; and that a Writ of Cap. Utlag. againſt ‘ him, was directed to the Sheriffs of London, returnable 15^o

* It is to be found in Ruſhworth, Vol. I. page 53 ; in the Parliamentary History, Vol. V. page 512 ; and, together with the Debates and Proceedings that gave occasion to it, in Vol. II. of Proceedings and Debates of the Houſe of Commons in 1620-1, page 359.

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‘ Paschæ next, at the suit of William Pinchebek and his wife,
‘ in a Plea of Detinue:—Upon which matters, and consultation
‘ had in the House, the question was asked by Mr. Speaker,
‘ If he should have Privilege of this House or not? And by
‘ the more number of voices, it seemed that he should not
‘ have Privilege: But, upon the division of the House, the
‘ number that would have him not to have Privilege, was
‘ 107, and the number that would he should be privileged
‘ was 112; and therefore ordered, That he shall still con-
‘ tinue a Member of this House.’ It should seem, from the
words of the order, that the doubt was, not whether he should
have a Warrant for a Writ of Privilege against the execution
of the Writ of Capias Utlagatum, (which, as Prynne observes,
in the Fourth Register, p. 1209, was returnable on a day then
to come;) but whether a man, who appeared to the House to
have been guilty of so gross a cheat, ought any longer to con-
tinue a Member: And, as Prynne says, “ How honourable
“ this vote was for the House, in the case of such a cheat-
“ ing Member, carried only by five voices, is not fit for me
“ to determine.”

31. On the 5th of February, 1562, ‘ Sir H. Jones com-
‘ plains all his servants to be imprisoned, and prays Privi-
‘ lege: but, after long arguments for the Privilege, commis-
‘ sion was given to Mr. Sackvill, and other, to examine and
‘ certify of the matter.—On the 8th, Mr. Sydney declared,
‘ upon examination, the fray to seem to be begun by Sir H.
‘ Jones’s servants:—On the 12th of February, a Bill is brought
‘ in against Sir H. Jones’s servants for the fray and riot; and
‘ the same day the Committees do certify to the House, that
‘ Mr. Jones’s men may be committed to the Serjeant, and
‘ that he attend Mr. Recorder and Mr. Gargrave with the
M ‘ prisoners,

‘ prisoners, before the Lord Chief Justice, to enter with sure-
 ‘ ties in bond of five hundred pounds to appear, personally,
 ‘ in the Queen’s Bench, in Trinity Term next, to answer
 ‘ to such things as shall then be objected to them on the
 ‘ Queen’s behalf, and so set at liberty.’ I do not find that
 this Bill went further than the first reading; but it is remark-
 able that, in the interval of these proceedings about Sir H.
 Jones’s servants for a fray and riot, it was ordered, on the
 10th of February, ‘ That several Persons, servants to Sir H.
 ‘ Jones, attached in London in three actions of Trans’, da-
 ‘ mage three thousand Marks, shall have a Writ of Privi-
 ‘ lege.’ It is probable that these were the same persons,
 and that the fray arose on their being attached in these ac-
 tions; and though a Writ of Privilege was granted them for
 these, the House took care that they should not be set at
 liberty on the riot till they had entered into a very large secu-
 rity to appear in the Queen’s Bench, to answer to what should
 be objected against them on account of this Breach of the
 Peace.

32. On the 16th of February, 1562, ‘ R. P., servant to Sir
 ‘ William Woodhouse, attached in London at the suit of
 ‘ T. R. Baker, in Trans’, hath a Warrant for Privilege,
 ‘ notwithstanding judgment given against him for four
 ‘ Marks.’

33. On the 8th of October, 1566, ‘ Gardiner, a Burgess,
 ‘ prisoner in the Fleet, desireth to be restored:—Whereupon
 ‘ the Master of the Rolls, and Master of Requests, were sent
 ‘ by the House to know the cause of the Lord Keeper;’ and
 the next day ‘ the Master of the Rolls declared, from the
 ‘ Lord Keeper, that Gardiner might be restored to this House,

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“ with condition, upon prorogation or dissolution, to be
“ eftsoons prisoner.” This is the whole of the entry in the
Journal; and it does not appear to me to warrant what Prynne
collects from it*, “ That Gardiner was kept prisoner for a
“ contempt of a decree in Chancery, as the Journal im-
“ ports.” Nor do I find any notice taken by the House of
the conditions proposed by the Lord Keeper.

34. In the fourth volume of the Parliamentary History,
p. 153, it is reported “ That Mr. Strickland, having in one of
“ his speeches earnestly pressed the reformation of the Book of
“ Common Prayer, was the next day called before the Queen’s
“ Council, and commanded by them to forbear going to the
“ House till their pleasure was further known: this occa-
“ sioned great clamour within doors; and divers speeches
“ and motions were made relating to Breach of Privilege, by
“ restraint of one of their Members from attending; although
“ he was neither imprisoned nor confined. But the Speaker
“ got up, and desired the House to forbear any further debate
“ on that matter; and the next day Mr. Strickland came again
“ to the House, by the Council’s allowance, to the no small
“ joy of his brethren.” It appears from Dewes †, that
Mr. Strickland had, on Saturday the 14th of April, 1571,
brought in a Bill for reformation of the Book of Common
Prayer, which, among other matters, forbad the kneeling at
receiving the Communion. The House adjourned from
this day to Thursday the 19th; and though Mr. Strickland
was then under the restraint of not coming to the House, no
notice is taken of it on that day: On Friday Mr. Carlton,
“ with a very good zeal and orderly shew of obedience, made

* Fourth Register, p. 1209.

† Page 166.

84 *From the Reign of Henry VIII. to the* Chap. 2.

“ signification, that a Member of the House was detained
 “ from them; by whose commandment, or for what cause, he
 “ knew not: but forasmuch as he was not now a private
 “ man, but to supply the room, person and place of a multi-
 “ tude specially chosen, he thought that, neither in regard
 “ of the country, which was not to be wronged, nor for
 “ the liberty of the House, which was not to be infringed,
 “ we should permit him to be detained from us, but, what-
 “ soever the intendment of this offence might be, that he
 “ should be sent for to the Bar of this House, there to be
 “ heard and there to answer.” To this Mr. Treasurer advised
 the House to be wary in their proceedings, and not to think
 worse than there was cause; “ for the man, quoth he, that
 “ is meant, is neither detained, nor misused, but, on confi-
 “ derations, is desired to expect the Queen’s pleasure, upon
 “ certain special points.—He further said, that he was in no
 “ sort stayed for any word or speech by him in that place
 “ offered, but for the exhibiting a Bill into the House against
 “ the Prerogative of the Queen, which was not to be tole-
 “ rated.” This doctrine being supported by another Privy
 Counsellor, Mr. Comptroller; they were answered by Mr.
 Yelverton. “ First, he said, the precedent was perilous; and
 “ though, in this happy time of lenity, among so good and
 “ honourable personages, under so gracious a Prince, no-
 “ thing of extremity or injury was to be feared, yet the times
 “ might be altered, and what now is permitted, hereafter
 “ might be construed as of duty, and enforced even on this
 “ ground of the present permission. He further said, that
 “ all matters not treason, or too much to the derogation of
 “ the Imperial Crown, were tolerable there, where all things
 “ come to be considered of; and where there was such full-
 “ nefs of power, as even the right of the crown was to
 “ be

“ be determined. — Besides, that the speech uttered in
 “ that place, and the offer made of the Bill, was not to be
 “ condemned as evil.” The spirit and manly sense of this
 speech had its immediate effect; for the Privy Counsellors
 whispering together, the Speaker moved, “ that the House
 “ should make stay of any further consultation thereupon;”
 and the next morning, almost as soon as the House met,
 Mr. Strickland coming in, whilst the Bill “ for coming to
 “ church and receiving the Communion” was referring to a
 Committee, “ the House did, in witness of their joy, pre-
 “ sently nominate him one of the said Committees;” and his
 name accordingly appears in the Journal, in which there is
 scarce any notice taken of all this proceeding. The great
 warmth with which this matter was taken up in the House,
 and the immediate submission of the Council, shews, with
 what little foundation the following remark, among many
 others equally unfounded, is made by the Compilers of
 the Parliamentary History, “ That, when, at any time,
 “ this Parliament touched upon the Queen’s Prerogative, ei-
 “ ther in religious or civil matters, a haughty message or two
 “ brought them tamely to submit, and calmly bear the bur-
 “ then *.” The speech of Mr. Yelverton, which is reported at
 length in Dewes, and from which I have given the foregoing
 extracts, breathes a spirit of freedom, and contains a know-
 ledge of the constitutional powers of the House of Commons,
 not to be exceeded even by that Parliament which established
 and confirmed the Revolution.

As this of Mr. Strickland is the first Case, in which we
 have met with any attempt to restrain the Freedom of Speech

* See 4th Vol. of Parliamentary History, p. 155.

in the House of Commons, it may not be improper here to observe, how jealous that House has always been of this most valuable and most essential Privilege. So long ago as in the fourth year of Henry VIII. Mr. Strode, a Member, having proposed a Bill in Parliament for the regulation of the Tinners in Cornwall, was prosecuted in the Stannary Courts for that offence, and there being condemned in a large sum of money, was imprisoned in Lidford Castle till he was delivered by a Writ of Privilege; but not till he had given security to save harmless the Warden's Deputy in whose custody he was. This very extraordinary proceeding being represented by him in a petition to the House of Commons †, an Act of Parliament was immediately passed ‡, to annul and make void these several judgments and executions; “and it was further
 “enacted, that all Suits, Condemnations, Executions, Fines,
 “Amerciaments, Punishments, Corrections, Grants, Charges,
 “and Impositions, put or had, or hereafter to be put or had,
 “upon the said Richard, and to every other of the person or
 “persons afore specified; that now be of this present Parli-
 “ment, or that of any Parliament thereafter shall be, for any
 “Bill, speaking, reasoning, or declaring of any matter or
 “matters concerning the Parliament, to be communed and
 “treated of, be utterly void and of none effect.” These general words have operated to make this a general subsisting law, not only in the opinion of Sir Edward Coke, Mr. Prynne, and other great lawyers, but it is now so declared by the formal Resolutions of both Houses of Parliament: “And that
 “it extends to indemnify all and every the Members of both

† I cannot find either in Lord Herbert, or the Parliamentary History, or in Rapin, or Mr. Hume, any thing

relating to this very extraordinary transaction.

‡ See the 4th Henry VIII. Ch. 8.

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“ Houses of Parliament, in all Parliaments, for and touching
“ all Bills, speaking, reasoning, or declaring of any Matter or
“ Matters in and concerning the Parliament, to be communed
“ and treated of, and is only a declaratory law of the an-
“ tient and necessary Rights and Privileges of Parliament *.”

35. The next Case I shall cite is not strictly within the line which I have laid down, being that of a Lord of Parliament, but it is curious, as it shews the ideas which the House of Lords at that time entertained, even of the Privilege of Person.—It is thus reported in the Fourth Register, p. 790 § :

‘ On the 30th June, 14 Elizabeth, 1572, in the Parliament
‘ Chamber, where the Lords Spiritual and Temporal assem-
‘ bled ;

‘ Whereas, upon complaint and declaration made to the
‘ said Lords Spiritual and Temporal, by Henry Lord Crom-
‘ well, a Lord of the Parliament, that in a Case between one
‘ James Taverner, against the said Lord Cromwell, for not
‘ obeying to an injunction given in the Court of Chancery, in
‘ the absence of the Lord Keeper of the Great Seal, at the suit
‘ of the said Taverner, the person of the said Lord Cromwell
‘ was, by the Sheriff of the County of Norfolk, attached, by
‘ virtue of a Writ of Attachment proceeding out of the said
‘ Court of Chancery, contrary to the antient Privileges and
‘ Immunities, time out of mind, unto the Lords of Parlia-
‘ ment, and Peers of this realm, in such cases used and allow-
‘ ed ; as, on the behalf of the said Lord Cromwell, was de-

* See the Commons Journal, 12th No-
vember, 1667; and the Lords Journal,
11th December, 1667.

§ See also the Lords Journal, 1st Vol.
p. 727.

‘ clared

• clared and affirmed, wherein the said Lord Cromwell, as a
 • Lord of Parliament, prayed remedy. Forasmuch as, upon
 • deliberate examination of this cause in the Parliament Cham-
 • ber, in the presence of the Judges, and others of the Queen's
 • Majesty's learned Counsel, there attendant in Parliament,
 • and upon declaration of the opinions of the said Judges and
 • learned Counsel, there hath been no matter directly produced
 • nor declared, whereby it did appear or seem to the said
 • Lords of Parliament there assembled, that by the common
 • law or custom of the realm, or by any statute law, or by the
 • precedents of the said Court of Chancery, it is warranted,
 • that the person of any Lord having place or voice in Parlia-
 • ment, in the like case in the said Court of Chancery, before
 • this time hath been attached; so as the awarding of the said
 • attachment, at the suit of the said Taverner, against the said
 • Lord Cromwell, for any thing as yet declared to the said
 • Lords, appeareth to be derogatory and prejudicial to the an-
 • tient Privilege claimed to belong to the said Lords of this
 • realm: therefore it is this day and year aforesaid ordered, by
 • the consent of all the said Lords in Parliament there assem-
 • bled, "That the person of the said Lord Cromwell be from
 • henceforth discharged of and from the said attachment."
 • Provided, nevertheless, and so is the minds of the said Lords
 • in Parliament, plainly by them with one assent declared;
 • That if at any time during this Parliament, or hereafter in
 • any other Parliament, there shall be shewed sufficient matter,
 • that, by the Queen's Prerogative, or by the common law or
 • custom of this realm, or by any statute law, or sufficient
 • precedents, the persons of any of the Lords of Parliament,
 • in such case as this Case of the Lord Cromwell is, ought to
 • be attached or attachable; then, and from thenceforth, it is
 • by this order intended, that to take place which shall be so
 • shewed.

‘shewed us, warranted as is aforesaid; this order, or any thing to the contrary, notwithstanding.’

Dyer, who was at this time Chief Justice of the Common Pleas, reports the judgment of the House of Lords in this Case* almost in the same words; but does not explain on what cause this injunction was issued: it appears, however, that the Lords, even where the person of a Peer was concerned, were extremely cautious that their determination should not supersede the authority of the Common Law. Prynne, in a note on that part of the Case which says, ‘that if it can be shewn, by sufficient precedents, that the persons of Peers are attachable;’ observes, “that the chief authorities against it are only “in cases of Breach of the Peace and Contempts with Force, “where fines are imposed, and a *capias pro fine* awarded, if “not paid, for the King, not party, but not for Breach of an “Injunction, for which there is no fine to the King by law †.”

36. On the 16th of February, 1575, it appears from the Commons Journals, ‘that a Committee was appointed to examine the matter touching the arrest of Mr. Hall’s servant.’ On the 20th it is ordered, upon Debate and a Division, ‘That he should have Privilege.’ On the 21st a Committee is appointed to consider ‘touching the manner of his delivery.’ And on the 22d, Mr. Attorney of the Duchy reported, ‘that the Committee found no precedent for setting at large by the Mace any person in arrest, but only by ‘Writ; and that, by divers precedents of Record, it appeareth, ‘that every Knight, Citizen, and Burgees of this House, who ‘requireth Privilege, hath used in that case to take a Corporal ‘Oath before the Lord Chancellor, or Lord Keeper of the Great ‘Seal, that the party, for whom such Writ is prayed, came up

* Page 314.

† See the fourth Register, p. 792.

N

‘with

with him, and was his servant at the time of the arrest made: And thereupon Mr. Hall was moved by the House, that he should repair to the Lord Keeper and make Oath in form aforesaid, and then proceed to the taking of a Warrant for a Writ of Privilege for his said servant, according to the said report of the said former precedents.—Whether Mr. Hall did apply to the Lord Keeper, in consequence of this motion, does not appear, but it is certain his servant did not obtain his release; for on the 27th of February, after sundry reasons, arguments, and disputations, it is resolved, That Edward Smalley, servant unto Arthur Hall, Esquire, shall be brought hither to-morrow by the Serjeant, and so set at liberty, by Warrant of the Mace, and not by Writ. And on the 28th, being brought to the Bar by the Serjeant, accompanied with two Serjeants of London, he was presently delivered from his Imprisonment and Execution, according to the former Judgment of the House; and the said Serjeants of London were discharged of their prisoner and sent out of the House. The House afterwards finding that Smalley had fraudulently procured this arrest, in order to be discharged of the debt and execution, commit him to the Tower for a month, and until he should pay to William Hewet the sum of one hundred pounds, which was probably the amount of the debt for which he had been arrested*.

The report from the Committee, that they could find no precedent for setting at large by the Mace any person in arrest, but only by Writ†, shews that they did not make a very diligent search, or proves that they did not consider Ferrers's Case merely in the light of an arrest for debt, but as an

* See the Journal of the 7th, and 10th of March, 1575.

† It has been suggested by a very inge-

nious friend of mine, that the hesitation of the House touching the manner of delivering Smalley, may be accounted for by considering

an insult on the King and the House.—It is very remarkable, that neither Elfyngc nor Prynn mention any thing more of this Case than the Report from the Committee of the 22d of February.—Indeed it did not suit Prynn's argument so to do; but that Elfyngc, who inclines to the enlargement of the Privileges of the House of Commons, should omit taking notice of the very circumstantial manner of the delivery of Smalley by the Mace, (a proceeding so much in favour of his doctrine, and which, as well from its novelty, as from its being adopted in direct contradiction to the opinion of a Committee appointed to examine into precedents, could not have escaped his observation) appears rather extraordinary. There is another very peculiar circumstance attending this Case of Smalley, which is, that he is committed not only for a month, which was a punishment for his insult on the House, but till he has paid the sum of one hundred pounds, or given security for the payment of it, 'which is to be certified by the Recorder of London, to the Lieutenant of the Tower, before any delivery or setting at liberty of the said Edward Smalley to be in any wise had or made, at any time after the expiration of the said month; and that he shall not be delivered out of prison before such notice certified, whether the same be before the first day of the next Term, or after.' The effect of this Judgment, so awarded, might have detained him even beyond the term of the existence of the Court which pronounced it†: Or, if it is supposed

considering that he was only a Member's servant; and therefore, when the report says that they could find no precedent for setting at large by the Mace *any person* in arrest, but only by Writ, it should be understood to mean any person of the same description with Smalley, i. e. any Member's servant.

† In fact, this judgment was pronounced by the Speaker on the 10th of March, 1575, and on the 14th of March the Parliament was prorogued.—If, therefore, the judgment was executed, he was certainly imprisoned for several days after the conclusion of the Session.

that he was set at liberty when the Parliament was prorogued, he thereby obtained the end he had in view, and defrauded his creditor; no Act having been passed, as in the former instances, to save the right of a new execution.

37. On the 29th of February, 1575, Mr. Bainebrigg complains that one Williams had assaulted and threatened him, upon which the Serjeant is ordered to go directly for the said Williams, that he may answer to the House of such matters as shall be objected against him: And the same day, Williams being brought to the Bar, and confessing that he did strike Mr. Bainebrigg, it is ordered, 'That he do remain in the Serjeant's ward, till the order of the House be further known to-morrow.' But I do not find any entry of any further proceeding. — In this Case, the House of Commons (without applying to the Queen) followed the precedent they had established in Mr. Johnson's Case in 1554. See N^o 25.

38. The same mode of proceeding was adopted in a similar Case, when, on the 1st of February, 1586, Mr. Norton complains that two porters had much misused him in his attendance on the service of the House. The Serjeant is ordered immediately to fetch them; when they being at the Bar, and charged with their misbehaviour, and rather excusing than submitting themselves; and the matter being proved by evidence, they are both committed to the Serjeant's ward till further order; but that the Speaker may, in the mean time, set one of them, who was only servant to the other, at liberty, upon his submission, if he thinks fit. On the 3d of February, the porter of Serjeant's Inn, (the Master) prisoner at the Bar, is, upon his humble submission and acknowledging his fault, remitted and set at liberty, paying his fees.

39. On

39. On the 4th of February, 1580, Mr. Norton complains of a Book; not only as reproaching some particular good Members of the House, but also very much slanderous and derogatory to the general authority, power and state of this House, and prejudicial to the validity of its proceedings, in making and establishing of laws. And it appearing to the House, that Mr. Hall, a Member, was the procurer that the said Book was printed and published, he is ordered immediately to be apprehended by the Serjeant at Arms, assisted by Sir Thomas Scott and Sir Thomas Browne: and a Committee is appointed to send for the Printer and examine him. — On the 6th of February, this Committee make a report, and Mr. Hall and the Printer being brought to the Bar, and further examination had, Mr. Hall is committed to the custody of the Serjeant, and other Committees are added to the former Committee to enquire further into this matter. On the 14th of February, Mr. Vice-Chamberlain reports what had appeared to the Committee; when Mr. Hall being again brought to the Bar, he submitted himself to the House and asked pardon: And being withdrawn, sundry motions, and arguments were had, touching the quality and nature of his faults, and of some proportionable forms of punishment for the same, as, Imprisonment, Fine, Banishment from the fellowship of this House, and an utter Condemnation and Retracting of the Book. But at last it was resolved, without one negative voice, that he should be committed to prison; and, upon another question, that he should be committed to the prison of the Tower, as the prison proper to the House: And it was further resolved, that he should remain in the said prison for six months, and until he should make retraction of the Book, to the satisfaction of the House: that he should pay a fine to the Queen of five hundred marks; and, that

‘ he should be presently severed and cut off from being a
 ‘ Member of this House any more during the continuance
 ‘ of this present Parliament:’ And a new Writ is ordered,
 in the room of Mr. Hall, ‘ so as before disabled to be any
 ‘ longer a Member of this House.’—And Mr. Hall being
 brought to the Bar, Mr. Speaker pronounces this Judgment
 against him.—After which, the course and form of these
 proceedings and judgment of the House are ordered to be
 digested and set down in due form, and entered by the Clerk,
 as other orders and proceedings are; which was done accord-
 ingly*.—The offences, which drew upon Mr. Hall this very
 extraordinary punishment, are recited at large in the Journal,
 and were certainly a very high and dangerous contempt of
 the authority of the House; he had been before charged
 before the Privy Council for the same crime, and it appears
 from the names of the Committees, that the most consider-
 able Members of the House, lawyers and others, were ap-
 pointed to examine into and conduct this matter; and yet,
 I should suspect from the number of punishments which
 were heaped upon him, “ Expulsion, Fine, and Imprison-
 “ ment,” that there was some private history in this affair;
 some particular offence against the Queen, with which we
 are not acquainted; for neither Prynne, nor the compilers of
 the Parliamentary History, do, as I can find, mention a
 single syllable of this very new and extraordinary proceed-
 ing.—On the 18th of March, being the last day of the
 Session, Mr. Hall having not then made any revocation or
 retractation of the errors, slanders, and untruths contained
 in his Book, the House appoint several Members of the
 House, the most considerable in rank, to receive such revoca-
 tion, when he shall please to make it, to be by them reported

* It is extremely well worth while to read the whole of this proceeding, of which I have read the Entries in the Journal of the only given an abstract.

to the House in the next Session; but the House does not shorten the time of his commitment, or remit any part of the Judgment pronounced against him. This Parliament being afterwards dissolved, we find nothing more of this matter in the Journal. But some years after, on the 21st of November, 1586, Mr. Markham, Member for Grantham, acquaints the House, on the part of the inhabitants of that Borough, that Mr. Arthur Hall, having been in some former Parliaments returned a Burgess for the said Borough, and in some of those Parliaments disabled for ever afterwards to be any Member of the House at all, hath of late brought a Writ for his wages, (amongst other times) for his attendance at the late Session of Parliament, holden at Westminster*, in the 27th year of the Queen, during which time he did not serve in the House, but was, for some causes, disabled to be a Member. This matter was referred to a Committee, who, on the 21st of March, report at large a state of the facts; that Mr. Hall had commenced suits for his wages, as one of the Burgesses of the Parliament in the 13th, 14th, 18th, and 23d years of the Queen, (not in the 27th,) but that the Committee having desired him to remit the said wages which he had demanded of the said Borough, Mr. Hall had very freely and frankly remitted the same †.

The Original Journals of the House of Commons being missing, from the conclusion of the Parliament of the 23d of

* It should seem from this, that Mr. Hall was elected for Grantham, in the Parliament which met on the 23d of November, 1584 (the Parliament imme-

diately succeeding that in which he was expelled); and again in that which met on the 29th of October, 1586.

† See this Report in Dewes, p. 417.

Queen Elizabeth, to the end of her reign, we are obliged to consult the collection made by Sir Simonds Dewes for the proceedings of the House during this period, through six successive Parliaments. Sir S. Dewes informs us, in his preface, from what materials he compiled this Work, and as it is a very laborious, so it has been in general considered as an impartial collection, and is now become very valuable from the loss of those originals from whence it was extracted.

40. On the 10th of February, 1584, a motion was made touching the opinion of the House for Privilege in Case of a Subpœna out of the Chancery, served upon Richard Cook, Esquire, a Member; and it was ordered, That Mr. Recorder of London, Mr. Sands, and Mr. Cromwell, attended on by the Serjeant of the House, shall presently repair, in the name of the whole House, into the body of the Court of Chancery, and there to signify to the Lord Chancellor and the Master of the Rolls, that, by the ancient liberties of this House, the Members of the same are privileged from being served with Subpœnas; and to require withal not only the discharge of the said Mr. Cook's appearance before them on the said Subpœna, but also to desire that from henceforth, upon like Cases, the said Lord Chancellor and Master of the Rolls, will allow the like Privileges for other Members of this House, to be signified to them in writing under Mr. Speaker's hand. The next day, the 11th of February, Mr. Recorder, Mr. Cromwell, and Mr. Sands being returned from the Chancery, declare unto the House, that they have been in Chancery within the Court, and there were very gently and courteously heard in the delivery of the message and charge of the House committed to them; and were answered by the Lord Chancellor, that he thought

‘ this House had no such liberty of Privilege for Subpoenas, as they pretended, neither would he allow of any precedents of this House committed unto them formerly used in that behalf, unless this House could also prove the same to have been likewise thereupon allowed and ratified also by the precedents in the said Court of Chancery; and after some speeches and arguments, the said Mr. Sands and Mr. Cromwell were further appointed to search the precedents of this House against the morrow, that thereupon this House may enter into further consideration of the state of the Liberties and Privileges of this House accordingly *.’ I do not find that these Gentlemen, or either of them, ever made any report of the precedents they found on this subject; nor indeed has any thing of this sort yet occurred, except in the two before recited Cases, of Mr. Beaumont N^o 24, and Mr. Eyms N^o 28, neither of which would have been of much service to them in support of the doctrine advanced by the House to the Lord Chancellor.

41. In the next Case which occurred, and which was of a similar kind, the House finding that they might meet with difficulties in applying to the Courts, took the remedy into their own hands, and adopted from this time a mode of proceeding, which proved more effectual to correct the evil.

On the 10th of February, 1584, Mr. Anthony Kirle is ordered to attend the next day, to answer to such matters as shall be objected against him on the behalf of Mr. Stepneth, Member for Haverford-West: Being the next day brought to the Bar, ‘ he is charged by Mr. Speaker, in the name of the whole House, with a contempt to the House, for that he

* See Dewes’s Journal, p. 347.

' had served Mr. Stepneth, a Member, with a Subpœna out
 ' of the Star Chamber in Parliament time, and within the
 ' palace of Westminster, as the said Mr. Stepneth was com-
 ' ing to the House to give his attendance there, and had fur-
 ' ther procured an attachment out of the said court against
 ' him, to the great hinderance and impediment of Mr.
 ' Stepneth's service and attendance in the House, and also to
 ' his great cost and charge.' To this charge Mr. Kirle was
 heard in his excuse; and then it was resolved, ' That the
 ' said Mr. Kirle had committed a great contempt to the
 ' whole House, and the Liberties and Privileges of the same,
 ' both in serving the said Subpœna upon the said Mr. Step-
 ' neth, and also in procuring the said attachment against him,
 ' and in all the residue of the parts of the said suit from the
 ' time of serving the said Subpœna hitherto.' And there-
 upon it was ordered and adjudged by the House, ' That the
 ' said Anthony Kirle shall, for his said contempt, be commit-
 ' ted prisoner to the Serjeant's ward and custody, there to
 ' remain during the pleasure of the House; and shall also
 ' satisfy and pay unto the said Mr. Stepneth, as well all such
 ' his costs, charges, and expences by him expended in and
 ' about the same suit, as shall be set down and agreed upon
 ' by Mr. Morrice and Mr. Sands (who were for that pur-
 ' pose appointed by the House to confer with the said Mr.
 ' Stepneth, and to examine those charges), as also all other
 ' charges and expences which the said Mr. Stepneth hath
 ' been at, or defrayed unto the said Serjeant, in or about the
 ' arresting which should have been executed upon him by
 ' virtue of the foresaid attachment out of the Star Chamber,
 ' at the suit of the said Mr. Kirle.' After which the said
 Mr. Anthony Kirle was brought again to the Bar, and there
 kneeling upon his knees, Mr. Speaker pronounced unto him
 the said Judgment in form aforesaid, in the name of the whole
 House.—

House.—And, on the 16th of February, a motion was made for Mr. Kirle's releasement from his Imprisonment; and thereupon he was brought to the House, 'and kneeling upon his knees, making very humble submission to the House, and acknowledging his fault, alledging it also to have proceeded of ignorance, and not of wilfulness; and likewise having paid to the Serjeant, to Mr. Stepneth's use, the money set down by Mr. Morrice and Mr. Sands, according to the former order of the House,' he was discharged, paying his fees, after he had first taken the Oath of Supremacy*.

42. On the 27th of February, 1586, the House was informed, that one William White had arrested Mr. Martin, a Member of the House; therefore it was ordered, 'That the Serjeant should warn White to be here to-morrow, fitting the Court.' On the 6th of March, William White was brought into the House, to answer his contempt for arresting Mr. Martin; who answered, 'that he caused him to be arrested the 22d day of January, which was above fourteen days before the beginning of the Parliament.' The House upon this appoint a Committee to search precedents, who on the 11th of March make report, 'of the Privilege of Mr. Martin, arrested upon mesne process by White above twenty days before the beginning of this Parliament, holden by prorogation (mistaken for adjournment), and in respect that the House was divided in opinion, Mr. Speaker, with the consent of the House, moved these questions to the House:

'(1.) Whether they would limit a time certain, or a reasonable time, to any Member of the House for his Privilege?

* See Dewes's Journal, p. 347. et seq.

The House answered, A convenient time.

(2.) Whether Mr. Martin was arrested within this reasonable time?

The House answered, Yea.

(3.) If White should be punished for arresting Martin?

The House answered, No; because the arrest was twenty days before the beginning of the Parliament, and unknown to him that would be taken for reasonable time. But the principal cause why Martin had his Privilege, was, for that White the last Session (mistaken for Meeting) of Parliament arrested Mr. Martin, and then knowing him to be returned a Burgess for this House, discharged his arrest; and then afterwards Mr. Martin again returning to London to serve in the House, Mr. White did again arrest him; and therefore the House took in evil part against him his second arrest, and thereupon judged, that Martin should be discharged of his second arrest out of the Fleet, by the said Mr. White*.

This Parliament met on the 29th of October, 1586: On the 2d of December, they were adjourned, by Commissioners from the Queen, to the 15th of February following; so that this arrest was not either before the beginning of the Parliament, or during a prorogation, but on the 22d of January, during an adjournment, and consequently clearly within Privilege.—But we learn from this Case, how very cautious the House of Commons were in ascertaining the time and duration of Privilege beyond the actual sitting of Parliament, not choosing to limit a time certain, but to reserve, within their own judgment, the definition of what should be thought reasonable or convenient.

* See Dewes's Journal, p. 410. et seq.

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This too being an arrest only upon mesne process, there was no difficulty as to the propriety of discharging Mr. Martin, or doubt about the mode of delivery, as he was liable to be again arrested immediately after the expiration of the time of Privilege.

43. On the 27th of February, 1586, Mr. Cope ' first using
' some speeches touching the necessity of a learned Ministry,
' and amendment of things amiss in the Ecclesiastical State,'
offered to the House a Bill, and a Book written; the Bill,
containing a petition, that it might be enacted, ' that all laws
' now in force touching Ecclesiastical Government should
' be void; and that the Book of Common Prayer now of-
' fered, and none other, might be received into the Church
' to be used.' The Book contained the Form of Prayer, with
the Rites and Ceremonies to be used.—A debate arose whe-
ther this Book should be read, the Speaker and one Mr. Dalton
objecting, ' that her Majesty, before this time, had command-
' ed the House not to meddle with this matter, and that this
' might bring her Majesty's indignation against the House,
' thus to enterprize the dealing with those things, which her
' Majesty had taken into her own charge and direction.' Mr.
Lewknor, Mr. Hurlston, and Mr. Bainbrigg spoke on the
other side; ' and so, the time being past, the House rose with-
' out either the Petition or Book being read.' On this the
Queen sent to the Speaker for the Petition and Book; and the
next day, the 28th of February, the House did not sit, the
Speaker being with the Queen; but on the 2d of March,
Mr. Cope, the proposer of the Bill, and Mr. Lewknor,
Mr. Hurlston, and Mr. Bainbrigg, the supporters of it, were
sent for to the Lord Chancellor, by divers of the Privy
Council, and from thence were sent to the Tower. The day
before, viz. the 1st of March, Mr. Wentworth had shared
the same fate, probably for a Speech which he made ' touch-
' ing

‘ing the Liberties of the House of Commons,’ and some questions which he proposed to Mr. Speaker upon that subject; which questions Mr. Serjeant Puckering (then Speaker) ‘pocketed up and shewed to Sir Thomas Heneage, who so ‘handled the matter, that Mr. Wentworth went to the ‘Tower, and the questions not at all moved*.’ The House, not warmed with that spirit of freedom which their predecessors had so properly exerted, in the similar Case of Mr. Strickland, in the year 1571, sat, without taking any notice of this gross violation of their Privileges, till the 4th of March; when Sir John Higham made a motion, ‘for that divers ‘good and necessary Members thereof were taken from them, ‘that it would please the House to be humble petitioners to ‘her Majesty, for the restitution of them again to the House.’ To which Mr. Vice-Chamberlain (Sir Christopher Hatton) answered, ‘that if the Gentlemen were committed for matter ‘within the compass of the Privilege of this House, then ‘there might be a Petition; but if not, then we should give ‘occasion of her Majesty’s further displeasure; and therefore advised to stay until they heard more, which could ‘not be long;’ and further, he said, touching the Book and the Petition, ‘her Majesty had for divers good causes, best ‘known to herself, thought fit to suppress the same, without ‘any further examination thereof; and yet conceived it very ‘unfit for her Majesty to give any account of her doings.’ With this evasive answer of Mr. Vice-Chamberlain, the House waited patiently till the 13th, when Mr. Cromwell moved ‘to have some conference with the Privy Council of ‘this House, and some others, concerning those Gentlemen, ‘Members of this House, lately committed to the Tower:’ Whereupon a Committee was appointed; but they made no report; nor do I find that any thing further was done in

* For Mr. Wentworth’s speech and questions, see Dewes’s Journal, p. 410.

this matter during the remainder of the Session, which closed on the 23d of March.

44. On the 12th of February, 1588, Mr. Puleston, Member for the County of Flint, complains, 'that William Aylmer, Esquire, did, since the beginning of the Session, cause a Subpœna to be served on him out of the Star Chamber, to the prejudice of the Liberties and Privileges of this House, to answer there to a Bill,' and prays the order of the House; and offers the precedent of Mr. Stepneth, under the hand of the Clerk; which precedent being read (Vide N° 41.), Mr. Aylmer is brought to the Bar, where Mr. Speaker, in the name of the House, charges him with the contempt, and requires his answer; 'who, thereupon, in all reverent and humble sort, shewed that the said Bill, whereupon the said Subpœna was awarded, did concern a wrong, not only to her Majesty, but also unto this honourable House, in an indirect course of proceeding in the election of the Knights for the County of Denbigh, into this present Parliament, procured by the said Mr. Puleston;' and so intimating, that the said Bill and serving of the said Subpœna did tend to the maintenance of the Liberties and Privileges of this House*. Mr. Aylmer being withdrawn, it is resolved, after some debate, 'that this matter should be considered of by a Committee; and that Mr. Aylmer (partly, for that he had been oftentimes heretofore a Member, and was an honest and grave Gentleman) should be left at liberty, but should be charged by Mr. Speaker, in the name of this whole House, to cease his suit against Mr. Puleston in the mean time.' A Committee is accordingly appointed, and Mr. Aylmer being again brought to the Bar, Mr. Speaker signified to him the order of the

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House, discharged him from the custody of the Serjeant, and required him to attend the Committee from time to time, and to forbear, in the mean time, to proceed against Mr. Puleston; to which he readily assented.—On the 19th of February, Mr. Vice-Chamberlain reports from the Committee, their opinion upon all the circumstances of the Case, ‘that Mr. Aylmer had committed a contempt unto this House, in prejudice of its Liberties and Privileges.’ He however recommended mercy to the House, not only on account of Mr. Aylmer’s humble and dutiful behaviour before the Committee, but from other favourable circumstances attending his Case, and therefore proposed, ‘that he might (acknowledging his fault, and upon his humble submission to be made to the House, and craving pardon for his said contempt) be set at liberty and discharged, paying the Serjeant’s fees:’ After sundry speeches and arguments, wherein it appeared, ‘that Mr. Puleston had already voluntarily, without the privity of the House, and since his complaint, put in his answer to the Bill, and that so the matter was actually at issue,’ the House ordered, ‘That Mr. Aylmer should not only be at liberty to proceed in his suit, without offence to the House, but should also, upon his humble submission to be made to the House, be discharged of his said contempt, paying his fees to the Serjeant of the House;’ which order and judgment of the House (Mr. Aylmer being again brought in by the Serjeant) Mr. Speaker pronounced unto him, and then, yielding unto the House his most humble thanks, he departed and went his way*.

45. On the 21st of February, 1588, upon a motion made by Mr. Harris, ‘that divers Members of this House, having Writs of Nisi Prius brought against them to be tried at the

* Vide Dewes’s Journal, page 431. et seq.

‘ Affizes,

‘ Affizes, in sundry places of the realm, to be holden and kept
 ‘ in the Circuits of this present vacation, and that Writs of
 ‘ Superfedeas might be awarded in those Cases, in respect of
 ‘ the Privilege of this House, due and appertaining to the
 ‘ Members of the same.’ It is agreed, ‘ that those of this
 ‘ House, which shall have occasion to require such benefit of
 ‘ Privilege in that behalf, may repair unto Mr. Speaker to
 ‘ declare unto him the state of their Cases, and that he upon
 ‘ his discretion (if the Case shall so require) may direct the
 ‘ Warrant of this House to the Lord Chancellor of Eng-
 ‘ land, for the awarding of such Writs of Superfedeas accord-
 ‘ ingly.’ It is remarkable, that this proposal of Mr.
 Harris, made almost as a motion of course, should be im-
 mediately and without debate adopted by the House, when
 nothing similar to this proceeding has occurred since the
 Writs in the eighth year of Edward II. cited by Sir Edward
 Coke (N^o 3.).—The House of Commons continued sitting
 till the 29th of March; and, as we hear of no further com-
 plaint upon this subject, it must be taken for granted, that the
 Lord Chancellor (then Sir Christopher Hatton) obeyed the
 Speaker’s Warrant*.

46. On the 24th of February, 1592, Mr. Peter Went-
 worth and Sir Henry Bromley delivered a petition unto the
 Lord Keeper, ‘ therein desiring the Lords of the upper House,
 ‘ to be suppliant with them of the lower House, unto her
 ‘ Majesty, for entailing the succession of the Crown, whereof
 ‘ a Bill was ready drawn by them.’ The Queen, always ex-
 tremely jealous upon this subject, as well as upon every thing
 which affected her prerogative in matters of Religion, was so
 much offended, that she charged the Council ‘ to call the
 ‘ parties before them.’ They were accordingly summoned the

* See Dewes, p. 436.

next day, Sunday, before the Lord Treasurer, the Lord Buckhurst, and Sir Thomas Heneage, and were told, ' that her Majesty was so highly offended, that they must needs commit them: ' Mr. Wentworth was accordingly sent prisoner to the Tower, and Sir Henry Bromley, and one Mr. Richard Stevens, to whom Sir Henry Bromley had imparted the matter, and Mr. Welsh, the other Member for Worcestershire, to the Fleet. Though this was not literally a commitment for their speeches or behaviour in Parliament, yet it had so near a relation to it, that one is surpris'd to find no notice taken of it for several days; however, on the 10th of March, the House being engaged on the subject of granting subsidies, Mr. Wroth made a motion, ' That in respect that some Counties might complain of the tax of these many subsidies, their Knights and Burgeses never consenting unto them, nor being present at the grant; and because an instrument, taking away some of its strings, cannot give its pleasant sound; he therefore desired, that we might be humble and earnest suitors to her Majesty, that she would be pleased to set at liberty those Members of the House that were restrained.' To this it was answered by all the Privy Counsellors, ' That her Majesty had committed them for causes best known to herself; and for us to press her Majesty with this suit, we should but hinder them whose good we seek; and it is not to be doubted but her Majesty, of her gracious disposition, will shortly of herself yield to them that which we would ask for them, and it will like her better to have it left unto herself, than sought by us.' With these assurances the House acquiesced; and though they continued sitting above a month, it does not appear from any circumstances, that these Gentlemen were ever released, or that any farther motions were made about them*.

* See Dewes, p. 470. et seq.

47. On the 1st of March, 1592, Mr. Serjeant Yelverton, from the Committee of Privileges and Elections, reported the following Case, ‘ Thomas Fitzherbert of Staffordshire, being
 ‘ outlawed upon a Capias Utlagatum after judgment, is elected
 ‘ Burgess of this Parliament: two hours after his election, before the indenture returned, the Sheriff arrested him upon
 ‘ this Capias Utlagatum: the party is in execution: now he
 ‘ sendeth his supplication to this House, to have a Writ
 ‘ from the same to be enlarged to have the Privilege in this
 ‘ Case to be grantable.’ Several questions arose out of this Case: (1.) ‘ Whether Mr. Fitzherbert, being outlawed, was
 ‘ eligible?’ (2.) ‘ If he were eligible; yet whether, under the
 ‘ circumstances of his Case, he was entitled to Privilege?’ (3.) and lastly, ‘ If entitled to Privilege, in what manner he
 ‘ ought to be delivered?’ Very long and almost daily debates ensued upon these Questions, until the 5th of April; for which I shall refer the Reader to Dewes’s Journal, where they are entered at length, and from which much Parliamentary learning is to be collected. On the 5th of April, the House came to the following resolution, ‘ That Thomas Fitzherbert was, by
 ‘ his election, a Member thereof; yet that he ought not to
 ‘ have Privilege, in three respects: (1.) because he was taken in
 ‘ execution, before the return of the indenture of his election;
 ‘ (2.) because he had been outlawed at the Queen’s suit,
 ‘ and was now taken in execution for her Majesty’s debt;
 ‘ (3.) and lastly, in regard that he was so taken by the Sheriff,
 ‘ neither sedente Parlamento, nor eundo, nor redeundo.’—I cannot help observing, that there was something very particular in this determination, it being the first instance in which the House had permitted their Member to be detained from his service, by any process whatever, in a Civil Suit; as to the third reason, which Prynne, in the fourth Register, p. 648, calls “ the grand reason,” viz. “ that he was taken nei-

“ther sedente Parlamento, nor eundo, nor redeundo;” the House must have forgot the doctrine laid down but a very few years before, in Mr. Martin’s Case (N^o 42.), about “what was the reasonable time of Privilege;” when, in the present instance, Mr. Fitzherbert was arrested on the 3d of February, and the Parliament met on the 19th of the same month. Sir Edward Coke, at that time Speaker and her Majesty’s Solicitor General, took a very extraordinary part in the arguments upon these questions, as may be seen in Dewes, p. 482. and 515; proposing ‘that, before a Writ of Privilege should be granted, it would best suit the gravity of the House to grant a Habeas Corpus cum causa, returnable in Chancery, the Sheriff to appear, and the whole matter being transmitted out of the Chancery, the House then to judge upon the whole Record; by which means it would be no escape in the Sheriff, nor would the party lose his action of debt, though Fitzherbert should be delivered:’ the House (it is said) well liked and adopted this novel and very strange mode of proceeding; forgetting that, in former Cases, these difficulties, now started by Mr. Speaker, had been easily obviated by a special Act of Parliament.—But, to their great surprize, on the 7th of March, Sir Edward Hobby reports, ‘that, having moved the Lord Keeper touching the said Writ of Habeas Corpus, his L^{or}ship thinketh best, in regard of the ancient Liberties and Privileges of this House, that a Serjeant at Arms be sent by order of this House for the said Mr. Fitzherbert, by which he may be brought hither without peril of being further arrested by the way, and the state of the matter then considered of and examined into.’ And this advice of the Lord Keeper Puckering was ‘well liked and allowed by the House;’ as more consonant to their own dignity, and more agreeable to former precedents, than the advice of Mr. Speaker Coke. On the 12th of

of March, Mr. Serjeant Moore, being heard at the Bar as Counsel for the Sheriff, not only mistakes the fact of the time of the arrest, 'as being three hours before the election, instead of two hours after,' but gives that as the reason why the House did not allow him Privilege, because he was arrested before he was elected a Burgess*. However, after a long hearing of the parties by their Counsel, the House returned again to the Writ of Habeas Corpus; and, on the 17th of March, it was resolved by the House, 'That this House, being a Court of Record, would take no notice of any matter of fact at all in the said Case, but only of matter of record; and that Mr. Speaker should move the Lord Keeper for a return, to be made by the Sheriff into the Chancery, of the Writ of Habeas Corpus, awarded by his Lordship upon motion from this House.' On the 3d of April, the Lord Keeper sent the Record of Fitzherbert's execution to the House; and the Chancery men who brought it, were called into the House to the Bar, and were appointed to read it, ut Clerici; and the House ordered the Writ sent out of Chancery, to be annexed to the Record: A very learned debate then arose, as to what power the House could exercise, in consequence of this Writ and the Sheriff's return; which ended, on Friday the 5th of April, in the final resolution and determination of the House, as set down before, 'that Mr. Fitzherbert ought not to have Privilege.'—There would have arisen a very great difficulty, if the House had come to a different determination, and had thereupon proceeded to deliver Fitzherbert out of custody, viz. "that the right of taking him in execution for this debt would have been gone, the Capias being

* See Moore's Reports, p. 340.—From whence it appears that the Serjeant, though himself Counsel in the cause, entirely mistook both the fact and the grounds on which the House proceeded; as may be seen from the History of this Case in Dewes, Townshend, and Prynne.

"satisfied."

“satisfied.” This difficulty did not occur (in the only instances in which the House hitherto had adopted this mode of proceeding) in Ferrers’s and Smalley’s Case; for in the first (N^o 19.), Ferrers was only a security, and the debt was still recoverable against the Principal; in the latter (N^o 36.), the House made it part of the condition of Smalley’s release, “that the debt should be first satisfied:” Elsyng* indeed is of opinion, “that an arrest upon an execution for debt, trespass, or contract, is merely void, and that it can be no prejudice to the Plaintiff; but he may have a new execution after the end of the Parliament.” This however was not a doctrine established at the time of Fitzherbert’s Case; and the proceedings of the House, in the subsequent Case of Sir Thomas Shirley, in the first year of James I. and the Act of Parliament of that year, Ch. 13. certainly prove this opinion of Elsyng to be ill-founded in point of law; the debt therefore to the Queen, and others, for which Fitzherbert was taken in execution, and the right to arrest him again, could only have been saved by a special Act of Parliament, as in the Cases of Lark, Clerk, Hyde, and Atwyll†.

48. On the 5th of April, 1593, Mr. Neale, Burgess for Grantham, complains, ‘That he had been arrested, the Sunday before, upon an execution; that he had paid the money due upon the execution, but that, out of regard to the Liberties and Privileges of the House, he thought it his duty to acquaint them with it.’ The next day, the 6th of April, Web-
len, the person at whose suit the execution was had, and the officer who executed it, were, for their contempt, committed prisoners to the Tower, there to remain during pleasure; and,

* Page 245.

† The curious Reader will not be content with the abstract I have given of this

Case of Fitzherbert, but will consult the several Entries in Sir S. Dewes’s Journal, p. 479. et seq.

on the 9th of April, they were reprimanded and discharged.— In this Case, the debt was discharged, and the Member set at liberty, and yet the House of Commons punished these men for this contempt, almost in the same breath that they determined that Fitzherbert, though actually under confinement, ought not to have Privilege:—It is curious to compare the deep and ample charge of the Speaker, Mr. Solicitor General Coke, against these poor offenders, with the opinion given by him in the foregoing Case of Fitzherbert, and his observations on the two Cases of Thorpe and Trewynnard*.

49. On the 22d of November, 1597, Sir Edward Hobby moved the House for Privilege for Sir J. Tracy, a Member, 'now presently at the Common Pleas, to be put on a Jury: Whereupon the Serjeant was presently sent with the Mace to call the said Sir J. Tracy to his attendance in the House, which was thereupon so done accordingly, and the said Sir John then returned to the House †.—This is the first instance that I have met with of a complaint of this nature: It is to be observed, that this Member is summoned to be upon the Jury, during the actual sitting of Parliament, and that he is thereby withdrawn from his attendance on the House of Commons.

50. On the 28th of November, 1597, Mr. Bowyer complains, 'that he was this day served with a Subpœna, to appear in the Chancery, by one Biddel; that he told Biddel 'he was a Member, and willed him to forbear the process, 'as being against the Liberties of the House;' who answered, 'that he would do it, notwithstanding any such Liberties

* See Dewes, p. 518, 519, 520.

† Dewes, p. 560.

‘or Privileges of this House whatsoever.’—At the same time, two other Members complain, that they were this day served with a Subpoena ad testificandum, and so in like manner moved for Privilege. The Serjeant is thereupon ordered to bring in the parties so offending, to answer the contempt.—The principle, upon which this proceeding was had, must have been, as in the last Case, That no summons to any other Court ought to be admitted to interfere with the Member’s attendance on his more essential duty in the High Court of Parliament*.

51. On the 6th of February, 1597, the House proceeded upon the same grounds, and in the same manner, against one Thomas Bashfield, for a contempt against the Privilege of the House, in disturbing, ‘by way of an appearance,’ Robert Sherry, a Member of the House †.

52. On the 7th of November, 1601, a servant of Mr. Coke, a Member, being arrested on a Bill of Middlesex, the Serjeant was sent to Newgate to bring the prisoner immediately to the House; and on his being brought to the Bar, with his Keeper attending him, he is by order of the House discharged from his said Keeper, and from his said Imprisonment; and Robinson, the party at whose suit he was arrested, was brought by the Serjeant to the Bar, and being reprimanded, was discharged, paying his fees ‡.

53. I cannot avoid inserting here a very curious Entry in Dewes’s Journal, p. 603. of a Case, in which the House of Lords interfered, on the arrest of one of the Queen’s servants. On the 12th of November, 1601, a Report being

* Dewes, p. 564.

† Dewes, p. 593.

‡ Dewes, p. 629. 633.

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made by the Lord Zouch, that William Hogan, an ordinary servant to the Queen, was arrested and imprisoned upon an execution by one Tolkerne, since the beginning of the Parliament; his Lordship desired the Judgment of the House, (1.) 'Whether an ordinary servant of her Majesty (though he be none of the Parliament) be not privileged from arrest during the time of Parliament in like sort as the servants of the Lords of the Parliament are privileged? and, (2.) 'Whether being arrested in execution, he may in this Case, by order of the House, be discharged?' Upon this information, the Lords ordered Tolkerne to be sent for, and directed that such precedents as the Clerk of the Parliament could shew, should be looked out and made known to the House. — On the 14th, the Clerk acquaints the House, that, out of all the Journal Books in his custody, there were to be found only these four here under mentioned, and no more; viz.

(1.) Anno, 27 Eliz. 1st of December, the Case of James Diggs, servant to my Lord's Grace of Canterbury.

(2.) Anno, 27 Eliz. 7th of December, of Robert Fiennes, servant to the Lord Binden.

(3.) Anno, 39 Eliz. 26th of November, of Edward Barton, servant to the Lord Chandois; and, 8th of December, of John Yorke, the Lord Archbishop's servant.

(4.) Anno, 14 Eliz. 30th of June, it appeareth that Lord Cromwell complains to the Parliament of an attachment served upon his person out of the Court of Chancery; and that his Lordship was, by order of the Parliament, discharged of the attachment, but whether
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this attachment was served in the time of the Parliament, it doth not certainly appear.

Before I proceed with the principal Case, it may be worth while to consider a little these four Cases, produced by the Clerk; observing, that none of them relate to servants of the King or Queen, and are therefore only applicable to the second point proposed by the Lord Zouch, that is, 'as to the mode of discharge.'

(1.) The first in point of time is that of Lord Cromwell, which I have inserted before at length, N^o 35*.

(2.) The next is the Case of Diggs, servant to the Archbishop of Canterbury, who, since the beginning of the Parliament, was committed to the Fleet, upon a Reddit-se in the Exchequer:—The Lords having heard the Lord Chief Baron, and other the Barons of the Exchequer, order, 'That the said Diggs, by virtue of the Privilege of this Court, should be set at liberty, and that the Warden of the Fleet should be discharged of the prisoner, and of any action that might be brought against him for the same; it was further ordered, 'That the appearance of the said Diggs should be a sufficient discharge of his Sureties and their Bonds, and that the Bonds should be re-delivered: Provided, that as the said Diggs was not arrested in execution at the suit of Howe, but committed upon a Reddit-se in discharge of his Sureties, it is further ordered, that touching the sum of money recovered by Howe, against the said Diggs, Howe and Diggs shall stand to such order as the Barons of the Exche-

* See the Lords Journals, Vol. I. p. 727.

‘quer shall fet down for the same.’—Here, though the Lords order the immediate discharge of the prisoner, they take care, as the Commons had done in Smalley’s Case, in 1574 (N^o 36.), that the creditor should be satisfied as to the original debt*.

There is another precedent which the Clerk might have found in his Journal Book, of the 6th of March, 1585, of one Clerk †, servant to the Earl of Leicester, but which is indeed only a repetition of the proceedings in the Case of Diggs.

(3.) The Case of Fiennes seems a very extraordinary one to be produced on the present question, because the Lords, after hearing of the cause, resolve, ‘That he shall not enjoy the Privilege of the House, as well because he did not claim this Privilege when he was first arrested, nor in the Counter when he was charged in execution; as also, that he was not a menial servant, nor yet ordinarily attendant upon the said Viscount Bindon.’ Nothing very material can be therefore collected from this precedent ‡.

(4.) The Cases of Barlton and Yorke appear to have been arrests on mesne process, and not in execution; as there is no provision for securing the debt §.

To return to the Case of Hogan.—The Lords having heard these precedents read, together with certain observations (out of a Book, written by Richard Crompton, Esquire,) concern-

* See the Lords Journals, Vol. II. p. 66.

§ See the Lords Journals, Vol. II.

† See the Lords Journals, Vol. II. p. 93. p. 201. et seq.

‡ See the Lords Journals, Vol. II. p. 69.

ing the proceedings of the House in the like Case of George Ferrers, an ordinary servant of King Henry VIII.*, order, that Tolkerne should be sent for; and a motion being made, 'That Hogan should be sent for out of prison, and brought before the Lords to be examined, and to make relation of his Case,' it was debated by what course the said Hogan should be brought, being then in execution, whether by Warrant from the Lords to the Lord Keeper, to grant forth a Writ in her Majesty's name for the bringing of the said Hogan, or by immediate direction and order of the House (to the Gentleman Usher, or Serjeant at Arms,) without any such Writ; which being put to the question, it was resolved and ordered by general consent, 'That it should be done by immediate direction and order from the House, without any such Writ.' Accordingly, Hogan being brought upon the 19th, and having made relation of his arrest, and that the Under Sheriff knew he was her Majesty's ordinary servant, but that Tolkerne was not privy to his arrest; and Hogan offering and petitioning to pay the principal debt of fifty pounds; it was resolved and ordered, 'that the said Hogan should enter into sufficient Bond, to abide by the order and judgment of the Earl of Cumberland, the Bishop of London, and Lord Zouch, for the satisfaction of the debt of fifty pounds, with costs and charges, and thereupon be discharged out of prison, and out of execution; and that the Warden of the Fleet should be free from any trouble, damage, or molestation, for the said discharge.'—The Under Sheriff being afterwards ordered to attend, was, on the 23d of November, for his offence in arresting Hogan, her Majesty's servant, committed to the prison of the Fleet, from

* See before N^o 19.

whence

whence he was set at liberty on the 26th, upon his humble petition *.

54. But a similar Case to this, which happened on the 1st of December following, was proceeded in very differently: — Vaughan, servant to the Earl of Shrewsbury, being arrested in execution, and in Newgate, and the Keeper of Newgate refusing to obey an order of the House of Lords, for the bringing up the said Vaughan; the Lords committed the Keeper to the prison of the Fleet, for his refusal and contempt; but, order being likewise given that such precedents as could be found, touching the proceeding of the Court in like case of arrest in execution, should be produced at the next sitting, the Lords (upon view and consideration of divers precedents and remembrances, produced this day, and differing from the manner of proceeding now followed,) ordered, 'That the Lord Keeper shall forthwith make out a Writ of Privilege of Parliament to the Sheriffs of London and Middlesex, to have the body of the said Vaughan, with the cause of his imprisonment, before the said High Court the next day.' The Lord Keeper accordingly made out the Writ; and the same, together with the prisoner Vaughan, and the cause of his imprisonment, being returned, and brought into Court by the Under Sheriff, the Lords, on the 4th of December, on hearing all parties, proceeded as in the former Case of Hogan: They discharged Vaughan from his imprisonment and execution, on his giving security for the debt, and ordered the immediate release of the Keeper of Newgate from the Fleet.

It appears from this Case, that the Lords, upon view.

*. For the proceedings at large in this Case, see the Lords Journals, Vol. II. p. 230, and Dewes, p. 603.

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and consideration of precedents, were of opinion, that the regular and legal mode of bringing before them any prisoner in execution, was not, as they had decided upon question in Hogan's Case, by their Warrant sent by a Serjeant at Arms, but by an order to the Lord Keeper for a Writ of Privilege of Parliament *.

55. On the 14th of November, 1601, Complaint is made of several Members having been served with Subpœnas, some ad respondend^m, others ad testific^m. And after a debate, which may be seen in Dewes †, and in which an ancient Member of the House shewed divers precedents, ' how that the minds ' of the Members of this House ought to be freed, as well ' as their bodies,' the House resolved, ' That the serving these ' Subpœnas of testific^m, without leave or information given ' to the House, was a breach of Privilege;' whereupon two Members were sent to require the Lord Keeper to reverse the Subpœnas, and the persons who had procured them were ordered into the custody of the Serjeant ‡.

56. On the 19th and 20th of November, 1601, Two servants of Members being arrested, were, by order of the House, discharged, and the persons procuring the arrest, and the officers, were ordered into the custody of the Serjeant §.

57. On the 27th of November, 1601, On a complaint against one Holland, and Laurence Brook, for abusing and beating Mr. Fleetwood, a Member, and his servant; they were brought to the Bar, and committed to the Serjeant for the

* See Lords Journals, Vol. II. p. 238, in Dewes, p. 647, 651, 655, 656. and Dewes, p. 607.

† Page 637.

‡ See other Cases of the like nature

§ See also another Case, on the 14th of December, 1601. — Dewes, p. 642, 643, 685, 686.

space of five days, and then to be discharged, paying their fees*.

58. On the 3d of December, 1601, Complaint is made to the House, of an information exhibited by the Earl of Huntingdon, in the Star Chamber, against Mr. Belgrave, a Member (as it should seem, for some offence, committed by Mr. Belgrave, at the election for the town of Leicester). This matter being referred to the Committee of Privileges, they report on the 7th of December, 'That Mr. Belgrave admitted
' the substance of the suggestion to be true, but denied the
' circumstance.—Some of the Committees censured it to be
' an enormous fault to invest himself (for so the words of the
' information are) in a blue coat, but others were of a con-
' trary opinion; but as the information was put in sedente
' Curia, and at the suit of the Attorney General, in order
' that he should be debarred of his remedy against the par-
' ty, the Committee thought it a disgrace: And on the 8th
of December, it is resolved, to demand a conference with the Lords upon this point; at which conference the Commons inform the Lords, that there were two exceptions to be taken to this information: (1.) 'That Mr. Belgrave, being
' a Member of the House of Commons, was thereby vexed
' and molested during his service in the time of Parliament,
' contrary to the honour and Privilege of the House; say-
' ing, that no Member of that House ought, by any such
' means, in time of his service to be distracted either in body
' or mind;' and, (2.) 'That in the said Bill preferred by
' the Attorney General, certain words and clauses were in-
' serted, which were taken to be prejudicial and derogatory

* Dewes, p. 656, 657.

‘ to the honour of the House.’ The Lords, without entering into any consideration of these points, objected that the Bill so brought by the Commons was not testified by the hand of the Clerk of the Star Chamber, and therefore sent it back to the Commons as informal; and afterwards on the 14th of December, when it was returned properly signed; it does not appear that they had any further proceeding upon this matter: Upon this the Commons, on the 17th of December, having first referred the whole to a Committee, resolve, upon their report, ‘ That the said Mr. Belgrave is
 ‘ free from any abuse offered to this House, and that he is
 ‘ not to be molested for any such imputation;’ and that this shall be entered as an Act of the House*.

These are all the precedents, or at least the most material ones, relating to the Privileges of Members of the House of Commons, that I have found from the earliest history of Parliament, to the end of the Reign of Queen Elizabeth.— And it appears, from some of the later Cases, that the House had, at this period, laid it down as the established law of Privilege, ‘ That no Subpœna or Summons, for the attendance of a Member in any other Court, ought to be served
 ‘ without leave obtained, or information given to the
 ‘ House; and that the persons, who procured and served
 ‘ such process, were guilty of a breach of Privilege, and
 ‘ were punishable by commitment or otherwise by the order of the House.’ The refusal of the Lord Keeper, in 1584, in the Case of Mr. Cook (N^o 40.), to revoke this process, seems to have given the first rise to this method of proceeding; and upon the same principle, viz. ‘ that the

* See this Case at length, and the debates upon it, in Dewes, p. 610, 614, 666, et subf. to p. 688; and Lords Journals, Vol. II. p. 247.

‘ minds

‘ minds of the Members ought to be free, as well as their bodies,’ the exemption from being compelled to serve upon juries, (N° 49.) or to any other attendance (N° 51.) which might interfere with their first and principal duty, viz. ‘ their attendance in Parliament,’ were insisted on by the House of Commons.—In earlier times, when a Session of Parliament was short, these avocations could not so often occur, so that such Summonses were no interruption to the attendance of the Members, and consequently did not call for the interposition of the authority of the House; but, during the latter part of the Reign of Queen Elizabeth, this interposition became absolutely necessary; and it was essential to the public business, that, during the sitting of Parliament, the Members should not be liable to be compelled, by the Summons of any inferior Court, to absent themselves from their attendance in the High Court of Parliament.

Another exertion of the authority of the House of Commons, which seems to have grown into constant practice, during the latter part of this Reign, is, ‘ the sending for persons entitled to Privilege, (when under arrest,) by the Serjeant at Arms; and the committing the bailiffs, and persons procuring the arrest, for their contempt to the House.’ The first instance in which the House appear to have exercised this power, is in Smalley’s Case, in 1575, (N° 36.) and this after great deliberation, and long debate and consultation: I call it the first instance, because, as I have observed before, I am convinced that the proceedings of the House in the Case of Ferrers, (N° 19.) were grounded more on the very particular circumstances of insult and aggravation which attended that arrest, than on the arrest itself, and not a little on his being a servant of the King; and we see that, from

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that time to Smalley's Case, for above thirty years, the House, instead of adopting this mode of delivery by the Mace, order Writs of Privilege to be issued in almost every instance*: Between the year 1575 and the end of Queen Elizabeth's Reign, there are one or two other instances of their exercising this more summary method of proceeding†. It appears from Hogan's Case (N° 53.) that it was still later before the House of Lords exerted this Privilege.—Where the person so delivered was a prisoner in execution, a very great inconvenience attended this mode of proceeding, viz. “that the creditor lost his right of arrest;” this inconvenience had, as we have seen, in all the earlier instances, been obviated by a special Act of Parliament, and, in a few years, compelled the Legislature to pass the General Law of the 1st Jac. I. Ch. 13.

I do not find any instance, during the Reign of Queen Elizabeth, of a complaint of breach of Privilege for the prosecution of suits against Members, sitting the Parliament, except in the Entry of the 21st of February, 1588, (N° 45.) and there the House are satisfied with ordering the Lord Chancellor to issue Writs of Superfedeas, but they do not proceed against the persons prosecuting such suits. This is the more remarkable, as we have seen several attempts made so long ago as in the Reign of Edward IV. (N° 14 and 15.) to establish this Privilege by Law; and in Atwyll's Case, (N° 17.) the House of Commons themselves claim it as the right of every Member, “not to be impleaded in any action personal,” and this right is allowed them: Now, it is difficult to conceive, that from Atwyll's Case, which happened in the seventeenth year of Edward IV. to the end of the Reign of Queen

* See before N° 22.

† See Huddleston's Case in Dewes, p. 685, 686.

Elizabeth,

Elizabeth, a space of above one hundred and twenty years, no action or suit should be prosecuted in any of the Courts of Westminster Hall, or at the Assizes, against a Member of the House of Commons, sitting the Parliament; or, if such a prosecution had existed, that the House of Commons should acquiesce in it, after the very clear decision of this Privilege in their favour, in Atwyll's Case, both by the King and House of Lords; and yet, on the examination I have been able to make into the several precedents relating to Privilege during this period, I do not find one, except that of (N° 45). It should seem therefore, that the principal object of the House of Commons, in the preservation of their Privileges at this time, was, the securing the persons of the Members, and of their menial servants, from arrests, and the not permitting the attendance of the Members to be interrupted by the Summons of any inferior Court; but as to the inconvenience which might arise to Members, from suits being carried on against them during the time of Privilege, they do not seem to have adopted this idea in so large an extent, as was entertained after the accession of James I.—There are, indeed, two Cases (N° 44. and 58.) in the Star Chamber, where the prosecution of the suit may perhaps be considered as the object of complaint: though in the first, Mr. Puleston complains only “of the service of the Subpœna,” and, in the course of this matter, it appearing that Mr. Puleston had put in his answer, and that so the matter was actually at issue, the House give leave to Mr. Aylmer to proceed in his suit, without offence to the House: and in the latter Case of Mr. Belgrave, the information seems to have been filed for offences committed by him, at an Election of Members of Parliament; and the House, having determined “that therein he is free from any abuse to the House,”

that time to Smalley's Case, for above thirty years, the House, instead of adopting this mode of delivery by the Mace, order Writs of Privilege to be issued in almost every instance*. Between the year 1575 and the end of Queen Elizabeth's Reign, there are one or two other instances of their exercising this more summary method of proceeding†. It appears from Hogan's Case (N° 53.) that it was still later before the House of Lords exerted this Privilege.—Where the person so delivered was a prisoner in execution, a very great inconvenience attended this mode of proceeding, viz. “that the “creditor lost his right of arrest;” this inconvenience had, as we have seen, in all the earlier instances, been obviated by a special Act of Parliament, and, in a few years, compelled the Legislature to pass the General Law of the 1st Jac. I. Ch. 13.

I do not find any instance, during the Reign of Queen Elizabeth, of a complaint of breach of Privilege for the prosecution of suits against Members, sitting the Parliament, except in the Entry of the 21st of February, 1588, (N° 45.) and there the House are satisfied with ordering the Lord Chancellor to issue Writs of Superseatas, but they do not proceed against the persons prosecuting such suits. This is the more remarkable, as we have seen several attempts made so long ago as in the Reign of Edward IV. (N° 14 and 15.) to establish this Privilege by Law; and in Atwyll's Case, (N° 17.) the House of Commons themselves claim it as the right of every Member, “not to be impleaded in any action personal,” and this right is allowed them: Now, it is difficult to conceive, that from Atwyll's Case, which happened in the seventeenth year of Edward IV. to the end of the Reign of Queen

* See before N° 22.

† See Huddleston's Case in Dewes, p. 685, 686.

Elizabeth,

Elizabeth, a space of above one hundred and twenty years, no action or suit should be prosecuted in any of the Courts of Westminster Hall, or at the Assizes, against a Member of the House of Commons, sitting the Parliament; or, if such a prosecution had existed, that the House of Commons should acquiesce in it, after the very clear decision of this Privilege in their favour, in Atwyll's Case, both by the King and House of Lords; and yet, on the examination I have been able to make into the several precedents relating to Privilege during this period, I do not find one, except that of (N^o 45). It should seem therefore, that the principal object of the House of Commons, in the preservation of their Privileges at this time, was, the securing the persons of the Members, and of their menial servants, from arrests, and the not permitting the attendance of the Members to be interrupted by the Summons of any inferior Court; but as to the inconvenience which might arise to Members, from suits being carried on against them during the time of Privilege, they do not seem to have adopted this idea in so large an extent, as was entertained after the accession of James I.—There are, indeed, two Cases (N^o 44. and 58.) in the Star Chamber, where the prosecution of the suit may perhaps be considered as the object of complaint: though in the first, Mr. Puleston complains only “of the service of the Subpœna,” and, in the course of this matter, it appearing that Mr. Puleston had put in his answer, and that so the matter was actually at issue, the House give leave to Mr. Aylmer to proceed in his suit, without offence to the House: and in the latter Case of Mr. Belgrave, the information seems to have been filed for offences committed by him, at an Election of Members of Parliament; and the House, having determined “that therein he is free from any abuse to the House,”

declare, that he is not to be molested for any such imputation. But both these instances, being in the Court of Star Chamber, and in their forms partaking of the nature of criminal prosecutions, and for offences in matters of Election, which were not cognizable but by the House of Commons, can hardly be produced as precedents, in favour of the doctrine laid down in Atwyll's Case, "that no Member is to be impleaded in any personal action, during the time of Privilege."—There is another Case, which is cited on the 2d of May, 1604, in the Commons Journal, as of the 16th of December, and forty-fourth year of Queen Elizabeth; 'where one Curwen, a servant of the Knight of the Shire of Cumberland, being arrested and in execution, sues out his Writ of Superfedeas;' the words of which, stating the Privilege of Parliament, are, 'that Lords, Members, and their servants, *ratione alicujus debiti, computi, &c. arrestari minimè debeant, implacitari, aut imprisonari;*' and therefore, 'quibus libet placitis, querelis, actionibus seu demandis versus ipsum Anthonium Curwen, supersedeatis omninò et ipsum Antonium deliberari faciatis.' No proceeding was had upon this Writ, because, as appears from a note annexed to it, 'the officers of the Sheriff, although they made doubt of this Warrant, for his enlargement, yet, because the matter was but small, delivered Curwen out of custody, rather than so honourable a Court of the Parliament should be farther troubled therein.' And indeed it appears from the report of this Case in Dewes *, that the principal offence was the "arresting" Curwen, and not the "impleading" him; and the House only resolve, 'that the said Anthony Curwen should have Privilege,' without any censure on the persons concerned in

* Page 685, 686.

the prosecution of the suit. This resolution was on the 15th of December, and the Writ bears date the next day.

The power exercised by the Ministers of the Crown, in committing Members, (as in N^o 34, 43, 46.) for a supposed breach of the Prerogative, by their speeches in the House of Commons, was indeed a very dangerous power, and most alarming to the essential Privileges of the House. If, in the two last instances, the House had taken up the question with the same spirit, as they had done in the Case of Mr. Strickland, in 1571, I have no doubt but that the consequences would have been the same: for although Queen Elizabeth carried her ideas of sovereignty very high, and, from the accidental circumstances of the times, had perhaps more power, and in some instances exercised a greater authority than the legal constitution of this country, even at that time, admitted; yet such was the wisdom of her Counsellors, and such her own good sense, that, in points in which she saw the House of Commons were resolute and determined, she was not ashamed to give way, even where the Prerogative of the Crown was really and essentially concerned; and this was never more apparent, than in her submitting to destroy the patents for monopolies, on the representations of the House of Commons upon this subject*.

This Privilege of liberty of speech, though from the thirty-third year of Henry VIII. it had always made one of the articles of the Speaker's petition to the Throne, was frequently cavilled at by the courtiers, in the Reigns of Queen Mary and Queen Elizabeth, when they thought it intrenched upon the Royal Prerogative; and, in general,

* See Vol. IV. of Parliamentary History, from p. 452. to 482.

the House acquiesced too much in this doctrine. It was reserved for a more enlightened age, and for times when the true spirit of liberty should be better understood, to ascertain and establish this Privilege in its utmost extent, consistently with the language of good-breeding, and the behaviour of men of liberal education. Indeed this Privilege is so essential to the very existence of a Free Council, that it always made a part of the Liberties of the House of Commons; and we see that, in the Case of Mr. Strode, so early as in the fourth year of Henry VIII. in the Act of Parliament which passed upon that occasion, this doctrine is clearly and explicitly declared, and all proceedings on condemnations for such speaking are held to be void*.

We have seen in Chedder's Case, (N^o 7.) in the fifth year of Henry IV. that, on an assault made on the person of a Member's servant, the House apply by petition to the King, and desire several punishments to be inflicted on the persons making the assault, according to the degree of their offence: This, however, the King declined at this time to grant, and only directed such process to issue, as should compel Salvage the offender to appear, then leaving him to the course of the law.—In Prynne's animadversions on the fourth Institute, p. 331, there is a record of a special commission, from Richard II. to several Gentlemen of the North, to enquire into a riot and assault made on the lands and servants of John de Derwentwater, then Knight of the Shire for the County of Cumberland, during his attendance in Parliament; and we have seen (N^o 9, 10, and 11.) several other instances, where the Commons apply to the King for redress, on assaults

* See the 4th of Henry VIII. Ch. 8.—Commons Journal, 12th of November, 1667.
—Lords Journal, 11th of December, 1667.

made upon the persons of Members, or their servants; and that these applications produced the Acts of the fifth of Henry IV. Ch. 6. and of the eleventh of Henry VI. Ch. 11. by the latter of which a punishment is enacted on those that make assault on Members coming to the Parliament: But in later times, even these laws being found ineffectual, it appears from the Cases (N^o 25, 37, and 57.) that the House of Commons very properly took the enquiry into these offences, and the punishment of the offenders, into their own hands.

The Case of Mr. Arthur Hall, in 1580, (N^o 39.) is the only instance that I have hitherto met with, or that, I believe, occurs upon the Journals before the Long Parliament of 1640, in which the House of Commons proceed upon a complaint against any person, for printing or publishing matters derogatory from the Honour or Privileges of the House *. It appears from the report of the Committee appointed to examine Mr. Hall's book, that it contained a variety of

* The only Cases that appear to be exceptions to this observation, are,

(1.) On the 5th of April, 1626, Sir T. Hobby moveth, "That a scrivener hath sold a copy of the Remonstrance, this day presented to his Majesty, *before the same was presented unto him.*"—Resolved, "he shall be sent for presently."—The scrivener is one Turner, dwelling without Westminster Hall Gate—

The Serjeant sent for him, but answer brought, he was not within.

(2.) See in Chapter the 4th, (N^o 11.)

a Committee appointed to enquire into a printed book, Who printed it, and by what allowance?—

(3.) Though it is not immediately applicable to this point, I cannot help referring the curious Reader to the proceedings of the two Houses, in relation to a Book published by the Bishop of Bristol about *The Union*, which was then in agitation; particularly, the Bishop's acknowledgment in the Lords Journals of the 5th of June, 1604.—See the Journals of the Lords and Commons, from the 26th of May, 1604, to the end of the Session.

offensive.

offensive matter, and that he had been guilty of a contempt of the House, in going out of town after having been enjoined to appear. The articles selected by the Committee out of the Book, and with which he was charged, were, first, ‘ the
 ‘ publishing the conferences of the House abroad in print,
 ‘ and that in a libel, with a counterfeit name of the Author,
 ‘ and no name of the Printer,—and containing matter of
 ‘ infamy of sundry good particular Members of the House,
 ‘ and of the whole state of the House in general, and also
 ‘ of the power and authority of the House; affirming, that
 ‘ he knew of his own knowledge, that this House had de
 ‘ facto judged and proceeded untruly:’ He was further
 charged, ‘ that he had injuriously impeached the memory
 ‘ of the late Speaker, deceased; and had impugned the au-
 ‘ thority of the House, in appointing Committees without
 ‘ his consent; and that, in defacing the credit of the Body
 ‘ and Members of the House, he practised to deface the au-
 ‘ thority of the laws, and proceedings in the Parliament;
 ‘ and so to impair the ancient orders touching the govern-
 ‘ ment of the Realm, and Rights of the House, and the
 ‘ form of making laws, whereby the subjects of the Realm
 ‘ are governed.’ Upon this complicated charge, increased by
 ‘ his wilful contempt, testified by an unseemly letter addressed
 ‘ by him to the House,’ he was sentenced, as we have seen
 before, to be imprisoned, fined, and expelled: And it
 was also ordered, “ that the said Book or Libel should be
 “ taken and adjudged to be condemned.”—Whoever will give
 themselves the trouble to read the Entry of this proceeding
 in the Journal of the 14th of February, 1580, from whence
 I have given the foregoing Extracts, will find it difficult,
 from the variety of offences of different natures charged
 against Mr. Hall, to deduce any precise idea of the Law of
 Privilege,

Chap. 2. *End of the Reign of Queen Elizabeth.* 129

Privilege, as understood by that House of Commons, 'with
' respect to the printing or publishing the debates or proceed-
' ings of the House;' provided that such publication was not
made 'in a false and infamous Libel, injuriously reflecting
' on the characters of Members, or impeaching the Rights
' and Authority of Parliament.'

FROM THE PERIOD OF THE ACCESSION OF JAMES I. TO THE END OF
THE PARLIAMENT OF 1628.
A
S from the period of the accession of James I. com-
plaints of breaches of Privilege will become exceed-
ingly frequent, I shall not think it necessary to insert in this
Work every Entry that occurs upon the Journals of those
which are the most common, unless the debate turns upon a
new point, or that the proceedings of the House upon it ap-
pear to be in any way extraordinary. And for the more
easily understanding these Cases, I shall separate them under
the following heads:

(1.) First, The commitment of Members of their Houses
by the Privy Council, or by any court of Justice or other
Magistrate.

(2.) Secondly, The arrest and imprisonment of Members
on their Journals, in civil suits.

(3.) Thirdly, The imprisonment of Members of their Houses
to attend inferior courts, as with the Justices of the Peace.

(4.) Fourthly, The proceedings of Houses of Parliament
Members, or their Journals, during the time of Privilege.

(5.) Fifthly,

C H A P. III.

**FROM THE ACCESSION OF JAMES I. TO THE END OF
THE PARLIAMENT OF 1628.**

AS from this period of the accession of James I. complaints of breaches of Privilege will become exceedingly frequent, I shall not think it necessary to insert in this Work every Entry that occurs upon the Journals of those which are the most common, unless the debate turns upon a new point, or that the proceeding of the House upon it appears to be in any wise extraordinary: And for the more easily understanding these Cases, I shall separate them under the following heads :

(1.) First, The commitment of Members or their servants by the Privy Council, or by any court of justice or other magistrate.

(2.) Secondly, The arrest and imprisonment of Members, or their servants, in civil suits.

(3.) Thirdly, The summoning of Members, or their servants, to attend inferior courts, as witnesses, jurymen, &c.

(4.) Fourthly, The prosecuting of suits at law, against Members, or their servants, during the time of Privilege.

(5.) Fifthly,

(5.) Fifthly, The taking the goods or effects of a Member in execution, or otherwise.

(6.) Sixthly, The assaulting or insulting a Member, or his servant, or traducing his character.

I think that all the Cases, relating to the Privilege of Members of the House of Commons, which occur between the accession of James I. and the dissolution of the third Parliament of Charles I. in 1628, to which period I shall now confine myself, will fall under one or other of these six heads.

And first therefore, I shall give the instances which are to be found of Members, or their servants, being committed or restrained by order of the Privy Council, by the courts of justice, or any inferior magistrate.

1. On the 3d of February, 1605, Mr. Brereton, Member for Flint, being committed by the Judges of the King's Bench for a contempt, during a prorogation, this matter is referred to a Committee; on the 13th, a Writ of Habeas Corpus is ordered for Mr. Brereton, which is returned and read in the House on the 15th, and Mr. Brereton is received. I do not find any report from the Committee, or any other entry of this matter.

2. On the 18th of February, 1605, Complaint is made of Sir Edwyn Sandys's servants being committed to Newgate, by a Justice of Peace, for being engaged in a riot, and that he refused to bail them; a Habeas Corpus is ordered for the servants, and the complaint is referred to the Committee of

Privileges; on the 19th they report, and the Justice is committed to the custody of the Serjeant. On the 21st and 22d, he is heard by his Counsel, and, on his submission and acknowledging his fault, is discharged. The entry of this Case in the Journal is so very confused, that it is difficult to know the exact state of it; the principal charge upon the Justice seems to have been, his refusing bail when it was offered, unless the parties would pay ten shillings.

3. On the 10th of March, 1609, and 12th, 14th, 15th, and 16th, is a very obscure entry of a breach of Privilege, committed by a constable on the son and servant of a Member.

4. On the 14th of June, 1610, Dr. Steward's servant is taken up for getting a woman with child; the Warrant was signed by four Justices, before the Parliament, but executed now; it is referred to the Committee of Privileges, who report on the 16th, and it is determined he should have Privilege; there is some debate on the 20th, about paying the charges.

5. On the 9th of April, 1614, the House are informed that Sir William Bampfylde is committed by the Lord Chancellor, since the summons to Parliament, but before his election; this matter is referred to the Committee of Privileges, who report on the 14th, that he was committed before the election for a contempt 'for not accepting Sir J. Wentworth's offer;' it is however ordered, 'that he shall have his Privilege, by Writ of Habeas Corpus.' Accordingly on the 16th, he is brought up by the Warden of the Fleet, by virtue of this Writ; and being brought in by the Serjeant with his Mace, to the Bar, the Speaker opens the matter, and desires

desires to know the pleasure of the House thereupon.—Here the entry in the Journal stops, and I find nothing farther relating to this matter, or that the House ever came to any determination about it.

6. It appears from the notes of speeches which are entered in the Journal of the beginning of the Session of 1620-1, (and from the debates which are published more at length in two volumes, from an original manuscript in Queen's College, Oxford) that, at the end of the last Session of Parliament in 1614*, some Members had been committed for speeches they had uttered in Parliament. This matter being now taken up, though at so great a distance of time, and being discussed for several days, but without heat or passion, many motions and propositions were made, in what manner the House might best assert this Privilege of freedom of speech, whether by bill, as in Strode's Case, or by petition to the King; after long consideration, it was determined on the 15th of February, to proceed by message to the King, and not by petition in writing, 'to desire, that, if any of the House should speak in any 'undutiful manner, they may be censured here, and not be 'punished in or after the Parliament.' But during the debate upon this question, a message to the House was brought from the King, by Mr. Secretary Calvert, to say, 'that his Majesty did grant liberty and freedom of speech, in as ample 'manner as any of his predecessors ever did; and if any 'should speak undutifully, (as he hoped none would) he 'doubted not but we ourselves would be more forward to 'punish it, than he to require it, and he willed us to rest

* Or of the last *convention*, as it is more properly called in the debates; the King also in his commission for the dissolution, saying, that it was no Session, 'pro eo quod nullus

'regalis assensus aut responsio, per nos, 'præstita fuit.' Parliamentary History, Vol. V. p. 303.

'satisfied.

134 *From the Accession of James I. to the* Chap. 3.

‘ satisfied with this, rather than to trouble him with any
 ‘ petition or message, and so cast ourselves upon one of these
 ‘ rocks; that, if we asked for too little, we should wrong
 ‘ ourselves; if too much or more than right, he should be
 ‘ forced to deny us, which he should be very loath to do.’
 This message from the King put an end, for the present, to
 any farther proceeding upon this matter *.—It is remark-
 able, that, notwithstanding the impartiality professed by the
 writers of the Parliamentary History †, it does not appear that
 they take any notice of these debates, (although they are to be
 found upon the Journal, to which they pretend strictly to ad-
 here) or of the proceedings of the House of Commons, in ap-
 pointing a Committee, and Sub-Committee, “ for free speech,”
 of which Sir Edward Coke and Mr. Glanville were chairmen;
 nay, which is more extraordinary ‡, they censure the biogra-
 pher Wilson, and other Historians, for saying, “ that after
 “ the dissolution of the last Parliament, several Members
 “ were committed for their behaviour in Parliament:” whereas
 the truth of this assertion appears from the debates §, and
 that these Members were imprisoned, ‘ for speaking freely
 ‘ their consciences in the House of Commons, and for which
 ‘ being before questioned, they had been cleared by the House
 ‘ that they had spoken nothing but what was lawful and
 ‘ fitting, and for which they gave good reason and satisfac-
 ‘ tion to the House.’ But this is only one of the many
 very glaring misrepresentations and omissions by the com-
 pilers of the Parliamentary History, which they will be found,
 upon examination, to have made in favour of James I. and
 Charles I.

* Vide Journal the 5th, 12th, and 15th
 of February, 1620.—Debates, vol. I. p.
 14, 32, and 47. and vol. II. in the Ap-
 pendix.

† Vol. V. p. 320.

‡ In p. 305 of the 5th volume.

§ Vol. I. p. 15. et seq.

Notwithstanding

Notwithstanding the fine words of his Majesty's message, in favour of liberty and freedom of speech, soon after the adjournment of the Parliament, in the month of June, 1621, Sir Edwyn Sandys was committed*, probably for something he had said on the 29th of May, on the report of the conference with the Lords, touching the breaking up of the Parliament†: I say it was probably for this, because on the 2d of June, Sir Edwyn Sandys informs the House, 'that he had heard that some words of his had been misconstrued, and that out of the House;' he then explains what he said at that time, 'not to have meant any slander against his Majesty's government;' and the House resolve upon question, *nemine contradicente*, 'That Sir Edwyn Sandys is free from any just cause of offence to his Majesty, or any other, by the particular words now related by him, or by any other words he hath spoken in this House.' This shews that exception had been taken to Sir Edwyn Sandys's speeches, 'for slander to his Majesty's government.' On the 4th of June, the House of Commons adjourns to the 14th of November, and from thence to the 20th of November.—On the meeting of the House of Commons on the 20th of November, Sir Edwyn Sandys being still in custody, or restrained by the King's order from attending, Mr. Mallory moved to know, 'what was become of him.' This question was renewed on the 23d, when it appears that Sir Edwyn Sandys had in the interim written a letter to the Speaker, in which he informed the House, 'that he had been confined;' but does not make

* It appears from the Appendix to the debates of 1621, in the Note on Vol. II. p. 182, that Sir Edwyn Sandys was committed on the 16th of June; the two houses had adjourned on the 4th of June.

† See Sir Edwyn Sandys's Examinations, as preserved in the British Museum, and printed in the Appendix to the debates of 1621.

any complaint to the House ' of the cause of his confinement.' However, many Members expressing their apprehensions, that this commitment could be for no other cause than for Parliamentary business, Mr. Secretary Calvert assures the House, ' that he was not committed for any thing ' said or done in Parliament ;' but, it is said in the debates *, ' that the House will scarce believe Mr. Secretary, but ' thinketh he equivocateth ;' and accordingly desire that his protestation may be entered in the Clerk's book, which was done : Sir Edwyn Sandys however not appearing, the matter is again taken up on the 1st of December, when, notwithstanding several attempts of the Privy Counsellors to stop any farther proceeding, it is ordered, ' That Sir Edwyn Sandys shall ' be presently sent for to come and attend the service of the ' House, if he be able to come, and, if he be not able ' to come, then to set down a declaration in writing, whether ' he were examined or committed for any Parliamentary business ;' and that Sir Peter Hayman and Mr. Mallory shall go to Sir Edwyn Sandys, and bring his answer.—The House having in the mean time resolved to send a Petition and Remonstrance to the King, setting forth the grievances under which the Kingdom then suffered ; the King, then at Newmarket, hearing of their intentions, immediately dispatched a letter to the Speaker, in which, after severely reprimanding ' those fiery and popular spirits of some of the House of ' Commons, who had presumed to argue and debate publicly ' of matters far above their reach and capacity, tending to our ' high dishonour, and breach of Prerogative Royal ;' he adds, ' And whereas we hear, they have sent a message to Sir ' Edwyn Sandys, to know the reasons of his late restraint, you

* Vol. II. p. 200,

‘ shall in our name resolve them, that it was not for any mis-
 ‘ demeanor of his in Parliament;—but to put them out of
 ‘ doubt of any question of that nature, that may arise among
 ‘ them hereafter, you shall resolve them in our name, that
 ‘ we think ourselves very free and able to punish any man’s
 ‘ misdemeanors in Parliament, as well during their sitting as
 ‘ after, which we mean not to spare hereafter, upon any oc-
 ‘ casion of any man’s insolent behaviour there, that shall be
 ‘ ministered unto us.’ This rash and ill advised message
 brought on several debates touching the Liberty of Speech, in
 which no man expressed himself with more honest warmth
 than Mr. Crewe, and with some strokes of eloquence, that
 would do honour to the most admired speakers: ‘ I would
 ‘ not, says he, have spoken about our Privileges, if the thing
 ‘ questioned were only matter of form, and not of matter;
 ‘ but this is of that importance to us, that if we should
 ‘ yield our Liberties to be but of grace, these walls, that have
 ‘ known the holding of them these many years, would blush;
 ‘ and therefore we cannot, in duty to our country, but
 ‘ stand upon it, that our Liberties and Privileges are our un-
 ‘ doubted Birthright and Inheritance.’ The Commons, hav-
 ing sent down another petition in answer to this letter of
 the King’s, were told again, ‘ That although we cannot al-
 ‘ low of your stile, calling it your ancient and undoubted
 ‘ right and inheritance, but could rather have wished that ye
 ‘ had said, that your Privileges were derived from the grace
 ‘ and permission of our ancestors and us; yet we are pleased
 ‘ to give you our royal assurance, that, as long as you contain
 ‘ yourselves within the limits of your duty, we will be as
 ‘ careful to maintain and preserve your lawful Rights and
 ‘ Privileges, as ever any of our predecessors were, nay, as to
 ‘ preserve our own Royal Prerogative.’ This open declara-

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tion of the King's, touching the foundation of the Privileges of the House of Commons, brought the matter to a crisis, and produced that famous protestation in vindication of their Rights and Privileges, which brought on the immediate dissolution of the Parliament, and which (though the King, 'by sending for the Journal Book, and striking out the 'Entry with his own hand,' was in hopes to have obliterated all traces of it) is still preserved, and will for ever remain a memorial of the true spirit of the Great Leaders of that House of Commons, who stood firm in opposition to the attempts of an arbitrary Monarch, wishing to trample upon the Rights and Liberties of his people*.

This protestation, made and recorded in the Journal of the 18th of December, differed so widely from the King's principles upon this question, that his Majesty thought fit to send for the Book, and, 'in full assembly of his Council, and in 'the presence of the Judges, did declare the said protestation 'to be invalid, annulled, void, and of no effect; and did 'further, manu sua propria, take the said protestation out of 'the Journal Book of the Clerk of the Commons House of 'Parliament, and commanded an Act of Council to be made 'thereupon, and this Act to be entered in the Register of 'Council causes: Intending, as it is expressed in the Entry in the Council Books, 'that hereby this protestation should 'be erased out of all memorials, and utterly annihilated.' Immediately on the dissolution of the Parliament, 'those ill 'tempered spirits,' Sir Edward Coke, Sir Robert Phelips, Mr. Pymm, Mr. Selden, and Mr. Mallory, who had been the most forward in asserting the Privileges of the House of Commons, were committed to the Tower and other prisons; the

* See this protestation before in p. 78.

locks and doors of Sir Edward Coke's chambers in London, and in the Temple, were sealed up, and his papers seized; Sir Dudley Diggs, Sir Thomas Crewe, Sir Nathaniel Rich, and Sir James Perrot, as a lighter punishment, were sent, under pretence of enquiring into matters concerning his Majesty's service, into Ireland, and Sir Peter Hayman into the Palatinate.

And thus ended this very important question between the King and the House of Commons, which the Reader will find his pains amply rewarded in studying more at large, in the Journals, from the 1st of December to the end of the Session; in the second volume of the debates, from p. 179. to the end, and the Appendix; and in the fifth volume of the Parliamentary History.

7. On the 8th of February, 1620, several pages, servants to Members, having been guilty of a riot and assault, in the face of the Judges of the King's Bench, were committed by that Court, but afterwards sent by them to the House of Commons, to be punished there.

8. The next Case I shall produce, is that of Lord Arundel, which, though it is not strictly within the line I originally proposed to myself, yet, as the proceedings upon it contain much curious learning, touching the Privilege of Parliament, I trust it will not be thought entirely foreign to the present Work. As these proceedings are to be found, collected together from the Journals of the House of Lords, both in the seventh volume of the Parliamentary History, p. 168. and in Elsynge, p. 192. I shall not insert them at length, but shall only give such extracts as may be sufficient for un-

derstanding the principles upon which the Lords proceeded in this matter.

On the 14th of March, 1625-6, Charles I. had committed the Earl of Arundel to the Tower, but the cause of his commitment was not expressed; it was supposed to be on account of the marriage of his eldest son with the sister of the Duke of Lenox, a relation of the King's. The Lords highly discontented that he was committed, sitting the Parliament, resolved to take the matter into consideration; and so to proceed, 'as to give no just offence to his Majesty, and yet preserve the Privilege of Parliament.' Upon this the Lord Keeper acquainted the House, that he was commanded by his Majesty to deliver this message to their Lordships, viz. 'That the Earl of Arundel was restrained for a misdemeanor, which was personal to his Majesty, and lay in the proper knowledge of his Majesty, and had no relation to matters of Parliament.' The Lords, however, immediately resolved themselves into a Committee, and the House being resumed, the Lords Sub-Committees for Privileges were appointed to search for precedents, concerning the commitment of a Peer of this Realm, during the time of Parliament; and several of the Judges were ordered to attend their Lordships.—The next day, the 15th of March, the Lord Treasurer Ley brought another message to the Lords, to say, 'That the King avowed the message delivered yesterday to their Lordships, by the Lord Keeper, to have been done punctually according to his Majesty's own discretion; and he knoweth that he hath therein done justly, and not diminished the Privilege of the House.' But, the Lords Committees not yet having reported the precedents, the Lords do not proceed any farther at present: On the 18th of April, the Lord President re-

ported the proceedings of the Sub-Committees: 'First, that
 ' the King's Counsel had searched and acquainted the Lords
 ' with all that they had found in records, chronicles, or
 ' stories touching this matter, unto which the Lords Com-
 ' mittees had given a full answer; and also shewed such pre-
 ' cedents as did maintain their own right*.' This report
 being read, it was agreed upon the question by the
 whole House, nemine contradicente, ' That the Privilege of
 ' this House is, that no Lord of Parliament, fitting the Par-
 ' liament, or within the usual times of Privilege of Parlia-
 ' ment, is to be imprisoned or restrained, without sentence
 ' or order of the House, unless it be for Treason, or Felony,
 ' or for refusing to give Surety for the Peace.'—And a Com-
 mittee was appointed to consider of a Remonstrance of the
 Privileges of the Peers of Parliament, and of an humble Pe-
 tition to be made unto his Majesty, to enjoy the same. The
 next day, the Lord President reported this Remonstrance and
 Petition, which was agreed to, and ordered to be presented
 by the whole House; to which the King made answer, ' That
 ' it being a matter of some consequence, he would advise of
 ' it, and give full answer in convenient time: ' This was on
 the 19th of April. — On the 24th, the House was called
 over; and the Earl of Arundel being called, the Lord-Keeper
 signified to the House, ' That his Majesty having taken into
 ' consideration the Petition of their Lordships, touching the
 ' Earl of Arundel, will return answer thereto with all expe-
 ' dition.'—On the 2d of May, the Lords, finding that not-
 withstanding the King's promises, the Earl of Arundel was
 still restrained from coming to the House, and that no notice

* These precedents, with the answers to them, are entered at length in the Journal of the House of Lords, and are also to be found in Elsyng; to which books I beg leave to refer the Reader.

was taken of their Petition, order the Lord Keeper again to move his Majesty, 'for a speedy and gracious answer:' On the 4th of May, the Lord Keeper acquainted the House, That in pursuance of their order he had moved his Majesty, on behalf of the Earl of Arundel; and that his Majesty gave for answer, 'That it is a cause in which his Majesty is willing
' to give satisfaction to your Lordships, and hath it in con-
' sideration how to do it; but, having been interrupted by
' other business, will, with all conveniency, give your
' Lordships satisfaction, and return you an answer.' The Lords waited patiently till the 9th of May, when, finding it was with no effect, they again petition the King, 'for a gra-
' cious and present answer.' The King, highly offended at this expression, 'and wondering at their impatience, since he
' had promised them an answer in convenient time;' tells them, 'That when he receives a message fit to come from
' them to their Sovereign, they shall receive an answer.' Upon this signification of the King's displeasure, the Lords strike out the word 'present,' and direct the Petition so altered to be again presented to the King; to which the King again answers, for the fourth time, 'that they shall have his an-
' swer, as soon as conveniently he can:' This was on the 13th of May, and the first Petition, with the King's promise to give an answer 'in convenient time,' was on the 19th of April.—On the 17th of May, the Lords renewed their Petition upon this subject, to which, on the 19th, the King answers, 'That they have no reason to mistrust the sincerity
' of his promises; that the Lord Arundel was committed
' for a fault directly against the King himself, having no
' relation to the Parliament; that, on the word of a King,
' he does not speak out of a desire to delay them, but, as soon
' as it is possible, that they shall know the cause:' Upon
this

this evasive answer, the Lords immediately direct the Committee of Privileges to consider, 'how farther to proceed with dutiful respect to his Majesty: and yet, so as may be for preservation of the Privileges of the Peers of this land, and the Liberties of the House of Parliament.' On the 24th of May, the Lord President reports another Petition to the same purport, and this is again presented by the whole House; to which the King again replies, 'That he will use all possible speed to give them satisfaction, and at farthest before the end of the Session.' The Lords seeing that, notwithstanding the most solemn promises so frequently repeated, the King intended to delay giving them satisfaction till the end of the Session, and by that pitiful evasion persist in the violation of their Privileges, immediately resolve, 'That all other business shall cease, and that consideration be had how their Privileges may be preserved to posterity;' and then adjourn to the next day. On the 26th, the King finding the matter grow serious, sends a message by the Lord Keeper to acquaint the Lords, 'That he doth much marvel that his meaning in his last answer should be mistaken; and for the better clearing his intentions, to assure the Lords, that their last petition was so acceptable to his Majesty, that his intent was then, and he is still resolved, to satisfy their Lordships fully in what they then desired.' The Lords, determined to be no longer insulted with this farce of words, immediately resolve (without taking notice of the message) to adjourn to that day sevensnight; and though the Duke of Buckingham wished only to signify to their Lordships, 'that he would decline his desire of having the King's Counsel to plead for him,' the Lords would not hear him, because they would entertain no business. On that day sevensnight, the 2d of June, the Lord Keeper delivered

livered another message from the King, ' That his Majesty hath
 ' thought of the business, and hath resolved that by Wed-
 ' nesday sevensnight at farthest, he will either declare the
 ' cause, or admit Lord Arundel to the House; and addeth
 ' further, upon the word of a King, that if it shall be sooner
 ' ripe, he will declare it sooner, and that he doth not mean
 ' to put so speedy an end to the Session, but that there shall
 ' be an ample space for the dispatch of public affairs.' Upon
 this, the Lords again resolve, ' That all other business shall
 ' cease, but this of the Earl of Arundel's, concerning the
 ' Privileges of the House;' and that this matter be considered
 in a Committee of the whole House the next day. On the
 next day, the 3d of June, the King, finding it was to no pur-
 pose any longer to contend with the Lords, upon a point
 which they were determined to maintain, and which, by their
 resolution to proceed upon no other business, must be brought
 to an issue sooner or later, sends another message by the
 Lord Keeper, ' That, in the matter concerning the Earl of
 ' Arundel, his Majesty hath been very careful and desirous to
 ' avoid all jealousy of violating the Privileges of this House;
 ' that he continueth still of the same mind, and doth much
 ' desire to find out some expedient, which might satisfy their
 ' Lordships in point of Privilege, and yet not hinder his
 ' Majesty's service in that particular: But, because this will
 ' require some time, his Majesty is content that their Lord-
 ' ships shall adjourn till Thursday next; and, in the mean
 ' time, his Majesty will take this particular business into far-
 ' ther consideration.' Upon which the House immediately
 adjourns itself to Thursday, and all business to cease until
 that day. Upon Thursday the 8th of June, the Lord Keeper
 delivered this message from his Majesty, ' That in pursuance
 ' of his message of Saturday last, to take away all dispute,
 and

‘ and, that the Privileges of the Lords may be in the same
‘ estate as they were when this Parliament began, his Ma-
‘ jesty had taken off his restraint of the Earl of Arundel,
‘ whereby he hath liberty to come to the House:’ And the
Earl of Arundel, being present, did render his most humble
thanks to his Majesty for this his gracious favour to him;
and gave their Lordships also most hearty thanks, for their
often intercessions for him to the King, and protested his
loyalty and faithful service unto his Majesty.

What a faithful picture of the character of Charles I. doth
this short history exhibit! Arbitrary, imperious, obstinate,
and deceitful! Secretly wishing to trample upon the Privi-
leges of Parliament, yet, not daring to avow his inten-
tions, he endeavours by false insinuations and untrue asser-
tions to protract the time, till it should be no longer in the
power of the Lords to contend with him; and, when at
last their cool but manly perseverance compels him to sub-
mit, he is not ashamed to give the Earl of Arundel his li-
berty, without suggesting even a hint of that ‘ most just cause,’
for which he so often pretended to detain him. Whoever is
acquainted with the history of this unfortunate Monarch,
will see in these outlines the sketch of that character, which
was afterwards more fully portrayed in the affair of Lord
Stafford, and of the Bishops, and which (the repeated vio-
lation of his royal word rendering all confidence impossible)
necessarily brought on that scene of confusion, that ended
in his own destruction, and in the overthrow of all order
and government.

9. On the 8th, 9th, and 10th of May, 1626, at a con-
ference with the Lords, on the charge against the Duke of
U Buckingham,

Buckingham, Sir John Eliot and Sir Dudley Digges, having used expressions that were thought to reflect upon the King and upon the Duke, were both committed to the Tower. The House of Commons, inflamed with this most flagrant violation of their Privileges, resolve upon the 12th of May, 'That this House will not proceed in any other business, till we are righted in our Liberties;' and therein set that example, which, we have seen in the foregoing Case, was followed by the Lords with so much success about a fortnight after. The accusation against Sir Dudley Digges was, 'that in speaking of the late King's death, he had uttered words touching upon the King's honour:' But the House having appointed a Committee to enquire into this breach of their Privileges, that Committee resolve, 'That a solemn protestation should be taken by every Member of the House, against their giving their consent to the speaking any such words, and denying that they had affirmed to any that Sir Dudley Digges did speak such words, or any to that effect.' And this protestation each Member solemnly made, as his name was called over from the book: And on the 15th of May, upon this matter being moved in the House of Lords, thirty Peers and six Bishops made this voluntary protestation, upon their honour, 'That Sir Dudley Digges did not speak any thing at the said conference, which did or might trench upon the King's honour.' Upon these assurances the King was satisfied, and Sir Dudley Digges was set at liberty, and on the 16th, in his place in the House of Commons, maketh his protestation fully, 'That, as the words charged against him were far from the words he used, so they never came into his thoughts.'—One of the charges against Sir John Eliot was of a very ridiculous nature; 'That in summing up the whole against the Duke of Buckingham, he had

‘ had insolently called him “ the man,” saying, “ you see “ the man,” which, as was observed by that grave but supple courtier, Sir Dudley Carlton, ‘ were extraordinary terms ‘ to use of so high a personage, such as he never heard the ‘ like in Parliament before.’ Though this free language of Sir John Eliot’s at the conference was the true reason of his commitment, it was a cause too ridiculous to be avowed; and therefore the King ordered the Chancellor of the Exchequer to inform the House, ‘ That the charge against Sir John Eliot ‘ was with things extrajudicial to this House;’ and on the House desiring an explanation of this word “ extrajudicial,” Mr. Chancellor said, ‘ It was his Majesty’s word, and therefore he could not explain it without his Majesty’s leave;’ Mr. Chancellor little considering what a charge of untruth and insincerity he hereby brought upon his Majesty. But the King, being probably advised to insist no longer upon a point which he could not maintain, on the 19th of May signed with his own hand a warrant for Sir John Eliot’s release; and on the 20th he was sent for to come into the House: As soon as he had taken his place, Mr. Vice-Chamberlain repeated the charge against him, ‘ in order (it is said) to give ‘ him an occasion to discharge himself of whatever might be ‘ objected against him;’ to which Sir John Eliot, instead of denying any thing he had said at the conference, or meanly endeavouring to explain away the harshness of the terms he had made use of, warmed with a spirit that did him honour, and which, with the whole of his behaviour during those times, will render his memory always dear to every lover of Liberty, avowed and supported every name he had given to this overgrown favourite; to the particular objection of the words, “ the “ man,” he said, ‘ he thought it not fit at all times to reiterate ‘ his titles, and yet he thinketh him not to be a God.’ The

U 2

House,

House, catching the spirit of this great patriot, immediately resolved without one negative, and even refusing to order him to withdraw, 'That Sir John Eliot had not exceeded the commission given him by the House, in any thing which passed from him in the late conference with the Lords:'. And the like resolution passed for Sir Dudley Digges.

Thus ended this impotent attack of that rash Monarch on the Liberties of the House of Commons, to the disgrace both of himself and his favourite.—The Compilers of the Parliamentary History cannot let this assertion of the Privileges of the House of Commons pass, without observing, * "That the imprisonment of Commoners, however unjustifiable in itself, was no unprecedented stretch of the Royal Prerogative." How much then are we obliged to those great men, Sir John Eliot, Sir Dudley Digges, Sir Edward Coke, Mr. Selden, Mr. Pym, Mr. Mallory, and many others, for putting a stop to these precedents; and when this argument, drawn from Precedents, was urged against them by the base and fawning flatterers of those days, they sensibly replied, "As to the question, whether these liberties are old or new, whether by the King's grant or by prescription, it is immaterial; if I am sure of my title, it is indifferent to me, whether I claim by descent or by purchase."—Or, as the same thought is expressed by a noble Writer of the present age, "If liberty were but a year old, the English would have just as good a right to claim and to preserve it, as if it had been handed down to them from many ages †."

10. The last Case I shall mention under this head, is that of Sir Henry Stanhope, who was committed by the Council

* Vol. VII. p. 168.

† Lord Lyttelton's Persian Letters, Letter 58th.

Table for a Challenge, and to prevent further danger: It appears from the Journal of the 3d, 5th, and 8th of May, 1628, and from Prynne *, that a Warrant had issued for apprehending him without expressing the cause of commitment, but that in the second Warrant it was declared to be "for the breach of the peace, and refusing to give security for the peace." The House sent for Sir Henry Stanhope by their Serjeant with the Mace, but on examination remanded him to the prison of the Marshalsea; and on the 8th of May, he, having given security for the peace, was set at liberty by order of the House.—Prynne has given a particular account of the debate upon this subject, for which he only cites the Journal: Now there is not a word of the debate entered there, nor in Rushworth, and therefore his authority upon this occasion is to be suspected, especially as he is totally mistaken in the manner of its being concluded; for he says †, "the quarrel was taken up, and so the Lords discharged him, not the House."—The alteration, which the Lords of the Council made in their second Warrant of the 4th of May, after the matter had been moved in the House of Commons, is very remarkable; as it is expressed in the very words used by the House of Lords, in their resolution on Lord Arundel's Case, and was certainly meant to meet the interposition of the House.

It do not observe that, among these complaints of breaches of Privilege, by the Imprisonment of the Members, or their servants, there is any one of a person committed by any process of a Court of Law, on any proceeding by Indictment or Information, in order to bring him to trial, or on any Capias to receive Judgment; and yet in a course of five and twenty years, it is but reasonable to suppose such an event must have

* Fourth Register, p. 714.

† Page 716.

happened.

happened.—The first, fifth, and seventh Cases are commitments by Courts of Justice, for a contempt to the Court: In these instances, the House claim their right to the personal attendance of their Member; and, in the seventh Case, where the servants deserved punishment, they are sent by the Judges of the King's Bench to the House of Commons, to be punished there; though they had been guilty of so high an insult on that Court, that it was observed, 'many for lesser offences had lost their hands.'

The second, third, and tenth Cases are in matters of the peace: If the Justice of the Peace in the second Case had taken the bail, or the security of the peace, which was offered, it does not appear that the Privilege of the House would have been broken; but being a trading Justice, (a character very much complained of about this time) he insisted on the payment of ten shillings, and in this he undoubtedly exceeded any powers given him by law, and by that rendered himself a very proper object of the jurisdiction of the House. In Sir Henry Stanhope's Case, the House on finding it a matter of the peace, remand him, till he procures his liberty by giving security of the peace.—These instances, with that of Lord Arundel, (N^o 8.) may, I think, be very properly considered as a Parliamentary explanation of the expression in Thorpe's Case, of "Surety of the Peace*," and of what Sir Edward Coke says in the fourth Institute, p. 25, "That the Privilege of Parliament does hold unless it be in three Cases, "Treason, Felony, and the Peace."

As to the Case of Dr. Steward's servant, (N^o 4.) I believe the law, with respect to bastards, stood at that time on the

* See before, p. 66.

eighteenth of Queen Elizabeth, Ch. 3. by which 'the Justices
' are empowered to punish the reputed father, and to make
' provision for the care of the child, and to charge such fa-
' ther with a weekly payment of a sum of money, which if
' he refuses to pay, then to commit him to the common
' gaol.' It does not appear from the Journal, on what
ground this commitment was made; whether only as being an
offence contra bonos mores, or, upon the Act of Parliament,
on his refusal to pay the money; it was however in neither
Case clearly a 'matter of the peace,' and therefore the House,
consistently with that doctrine, determined he should have
Privilege.

The sixth, eighth, and ninth Cases are commitments by the
King or Council, for offences against the Court, by speaking
too freely of the Prerogative, or by some act by which the
King thought himself personally injured. In these instances,
both Houses, with equal spirit, assert their indubitable and
essential right of freedom of speech, and of the personal free-
dom of their Members, and refuse to proceed in any business,
till their Members are restored to them.—If this claim, set up
by James I. and Charles I. to imprison the Members of either
House of Parliament, at any time, and under any pretence,
could have been established and carried into execution, it would
have made no inconsiderable part of that system of Prerogative
Government, which these ill-advised Princes were so desirous
of erecting: The terrors of hard imprisonment, and Star-
Chamber punishments, would undoubtedly have prevented
many Members from voting or speaking against the measures
of the Court; while the more firm and resolute, the Went-
worths, Eliots, and other manly spirits, whom no terrors
could

could affright, would, by this power, have been withdrawn from the House; and the Court might easily have prevailed with the timid herd, which were left behind, to have given the countenance of Parliamentary authority to those measures that they were aiming against the constitution; and would thereby have established the power of the Monarch on a foundation, perhaps never afterwards to be shaken. — In these commitments, which we have hitherto met with, made either by the Council Table, or by the order of the King, there is generally that modesty in the ministers to wish, that it may be supposed that such commitments were not for any liberties taken in speeches, or for particular votes or behaviour in either House of Parliament, but for offences of another sort committed out of Parliament; well knowing, that if the Parliament could be deluded by these pretences, their end would be equally answered, and they should avoid contesting those liberties which they could not deny to exist, and which they were aware the Parliament could never resign. — Yet in the instance of Sir Edwyn Sandys, (N° 6.) that weak Prince, James I. induc'd by his fondness for big words, and angry menaces, cannot help in his message to the House of Commons, openly avowing his right to punish any man's misdemeanors in Parliament; though, in the same breath, he is pusillanimous enough to tell a manifest untruth, that, in this particular Case, Sir Edwyn Sandys was not committed for any such behaviour. This transaction is a true picture of the character of that unwise Monarch; loud, obstinate, boasting, threatening in words, but, when matters were brought to a crisis, mean, cowardly, trifling, and supple: It is however providential for this country that he existed such as he was; if, on the one hand, he had made fewer claims in favour of the Prerogative, he would not have excited those

those active and determined patriots, who, in opposition to his arbitrary measures, examined into the History of the Constitution of this Government, and brought forth those rules and principles, which were afterwards so justly applied in resisting the power of the Crown, and reducing it within its legal limits: Sir Edward Coke, Sir Dudley Digges, Sir Robert Phelips, Mr. Crewe, and many others, might have passed unobserved through life, and this country might never have reaped the advantages of those studies and that knowledge, to which the patriots in the succeeding Reign, and those who brought about the Revolution, were so much indebted. If, on the other hand, he had had more true spirit, and wisdom, and resolution to have abided by and supported those claims, upon the foundation of the precedents made by his predecessors of the House of Tudor; it is impossible to say, what might have been the event: I trust the great men of those days would not have been found an easy conquest; they would, I make no doubt, have continued the same opposition, though they had been obliged to purchase their liberty with their lives: Happily however for us, they were not put to so severe a trial; the weakness of their competitor always gave the victory on their side.

(2.) The second general head, is the arrest, or imprisonment of Members, or their servants, in civil suits.

1. And the first Case which occurs, is that of Sir Thomas Shirley, on a complaint made on the 22d of March, 1603, of his being arrested at the suit of a creditor, and imprisoned four days before the sitting of Parliament. The proceedings of the House upon this complaint, and the Bills which were brought in in consequence of it, take up a considerable part of

the Journal of this Session *; I shall here therefore only insert a summary account of the Case, copied from the fifth volume of the Parliamentary History †.

Sir Thomas Shirley, Member for Steyning, had been committed prisoner to the Fleet, soon after his return, and before the Parliament met, on an execution. The House sent their Serjeant at Arms to demand the prisoner, which was refused by the Warden; on this he was himself sent for to the House, where he, still persisting in refusing to release the prisoner, was committed to the Tower for the contempt. On the 9th of May, a debate arose in the House, in what manner they could release their Member; some arguing that the House could not, by law, secure the Warden from an escape of his prisoner: But the Recorder of London said, 'That this was not a time to treat about matters of law, but how to deliver Sir Thomas Shirley.—He moved therefore that six of the House might be selected and sent to the Fleet, with the Serjeant and his Mace to attend them; there to require the delivery of Sir Thomas Shirley; and, if it was denied, to press to his chamber, and, providing for the safety of the prison and prisoners, to free him by force, and bring him away with them to the House.'—This motion of Mr. Recorder of London was put to the question, and carried by one hundred and seventy-six, against one hundred and fifty-three, on which it was resolved to send, with direction and authority as before: But the Speaker, putting the House in mind, that all those, so sent to enter the prison in that manner, were, by law, subject to an action upon the Case, it was thought meet to stop the proceeding.—Many

* Which is very well worth the Reader's perusal.

† Page 113.

projects were formed in the House, for several days together, for the delivery of the prisoner, but to no purpose; when the Warden was again ordered to be brought before them, and though told of the greatness of his contempt, and terrified with further punishment, if he would not yield, he still refused to deliver his prisoner to them. On this another debate arose, and having come to a resolution, the Warden was again called in, when he, still persisting in his obstinacy, was told by the Speaker, ‘ That as he did increase his contempt, ‘ so the House thought fit to increase his punishment, and ‘ that their judgment was, now, that he should be committed to the prison called Little Ease, in the Tower.’ The next day, the Lieutenant of the Tower sent a letter to the Speaker, importing, that he had talked with the Warden his prisoner, and that he now seemed to have some feeling of his error and obstinacy; and that if the House would send two of their Members, which he named, to satisfy him in the point of his security, he would deliver up his prisoner to their Serjeant, when they would please to send for him. But the House would not consent to this; and the day after, they came to a resolution, to send another Warrant of Habeas Corpus to release their Member; and that the Warden should be brought from the Tower to the door of the Fleet, and there to have it served upon him by the Serjeant, and then to be returned to his dungeon of Little Ease again. The forms of all these Warrants are in the Journal; but there is a memorandum added to this last, ‘ That Mr. Vice-Chamberlain was privately instructed to go to the King, and ‘ humbly desire, that he would be pleased to command the ‘ Warden, on his allegiance, to deliver up Sir Thomas; not ‘ as petitioned for by the House, but as if himself thought ‘ it fit, out of his own gracious judgment.’—It is likely this

last method prevailed, for we find that Sir Thomas was delivered up, by a petition sent to the House from the Warden in his durance, and praying to be released from it. The House however thought fit to continue him, in the same dismal hole, some time longer, when at last, being ordered to be brought to the Bar, on his knees, 'he confessed his error and presumption, and professed that he was unfeignedly sorry that he had so offended that honourable House.' On which, the Speaker, by direction of the House, pronounced his pardon and discharged him, paying the ordinary fees.

It appears that the principal difficulty attending the release of Sir Thomas Shirley, was the same that had occurred in the former Cases of this nature, viz. 'That the Warden would have been liable to an action of escape, and the creditor would have lost his right to an execution.' Nor was it in the power of the House of Commons alone to give any security upon either of these points; it therefore became necessary in this Case, as in the instances of Lark, Atwyll, &c. to make a particular law, 'to secure the debt of the creditor, and to save harmless the Warden of the Fleet.' And in order to avoid this difficulty for the future, it was thought expedient to pass the general law of the first of James I. Ch. 13. 'for new executions to be sued against any which shall hereafter be delivered out of execution by Privilege of Parliament, and for discharge of them out of whose custody such persons shall be delivered.'— It appears however, from the words of this Act, (and from the proviso at the end of it, 'That nothing therein contained shall extend to the diminishing of any punishment, to be hereafter, by censure in Parliament, inflicted upon any person which hereafter shall make, or procure to be made, any such arrest

‘arrest as is aforesaid,’) that the opinion of both Houses of Parliament at that time was, that, during the Privilege of Parliament, it was not lawful to arrest, even in execution, any Member of either House of Parliament; and yet it is clear from the former instances, and from the variety of expedients proposed by the House of Commons in this Case of Sir Thomas Shirley, in every one of which they failed, that hitherto neither the law of Parliament, nor any statute had pointed out a mode, by which the Members should be delivered, or had taken care to secure the Gaoler from an action for an escape, or to ensure to the creditor his right to a new Writ of Execution *.

2. On the 13th of February, 1605, Complaint is made that Mr. Brook, a Member, had been arrested, by virtue of a bill of Middlesex, by one Mallorie, three days after the last Session; the next day, Mallorie is brought to the Bar, in custody of the Serjeant, but on his protesting ignorance of Mr. Brook’s being a Member, and being commanded to withdraw his action, he is pardoned and discharged.

3. On the 10th of February, 1606, Thomas Finch, servant to Sir Michael Sandys, had been arrested in an action of debt, at the suit of Thomas Knight, a Fishmonger; and being prisoner in the Counter, an execution was laid against him for forty pounds: A Habeas Corpus was ordered to be awarded, for the bringing the body of Finch to the House on the Friday following (a copy of which is inserted in the Journal of the 13th of February, with the Speaker’s Warrant, and the return of the Sheriffs to the Writ); by virtue of this Writ, Finch was brought up, and the other parties attend-

* See Note, p. 47, and 59.

ing.

ing were heard in their defence, and were excused; but Finch was privileged, and ordered to be delivered, 'according to former precedents.'

4. On the same day, the 10th of February, 1606, Complaint was made that Mr. James, a Burgess, had been arrested on an execution: The Attorney who procured the arrest, and the officer who arrested Mr. James, were the next day brought to the Bar, and for their contempt were committed to the custody of the Serjeant for a month; which judgment was pronounced against them, kneeling at the Bar, by Mr. Speaker. On the 19th of February, Sir Noel de Caron, minister from the States General, intercedes for Bateman the Attorney by a letter to the Speaker; and on the 20th, Bateman petitioning, he, and the officer who arrested Mr. James, are both brought to the Bar, and discharged.—I do not recollect any instance, prior to this, of persons being committed to the custody of the Serjeant by way of punishment.

5. On the 20th of February, 1606, Hawkins, servant to Sir Warwick Heale, was arrested in an action of eight thousand pounds: A Habeas Corpus was ordered to be issued to bring up Hawkins, and the other parties were to be summoned to appear; but the affair was, the same day, reported to be stayed and appeased by mediation.

6. On the 30th of June, 1607, a Member's servant was arrested: On the 1st of July, Pasmore, the officer who had arrested him, is brought to the Bar by the Serjeant, and, having been heard in his defence, is committed to the Serjeant during the pleasure of the House, and ordered to discharge the suit, and to pay the expences attending it, and his own fees to

to the officers of the House; and on the 4th of July, the House being informed that these conditions had been complied with, he was ordered to be discharged upon his submission.

7. On the 5th of March, 1609, Eustace Parry, servant to Sir James Scudamore, was taken in execution: The House immediately order a Warrant for a Writ of Privilege; on the 15th, this matter is referred to the Committee of Privileges, and, on the 16th, report is made from the Committee, that the party shall have his Privilege, and be delivered; but that the Sheriff be excused, as not knowing him to be a Member's servant: There is much debate, who is to pay the fees, i. e. the expences of the arrest and imprisonment; and it was resolved, that the constable arresting shall not, but the party accused shall; this party was Wayte, at whose suit and by whose direction the arrest was made: On the 28th, Wayte is examined and pardoned, paying his fees.

8. The memorable Parliament of 1621, being engaged in many very important pursuits for the public service, it was thought advisable, in order not to interrupt their proceedings, that they should not be prorogued, but only adjourned during the summer months: As soon as this was determined, it appears from the Journals, and from the proceedings of that Parliament, that there were great doubts and debates, as to the mode and effect of this so long an adjournment, with respect to Privilege.—On the first of June, 1621, the opinions of Sir Dudley Digges, Sir Robert Phelips, Sir Edwin Sandys, and many other experienced Members, are delivered upon this occasion; but it appears from the se-

cond volume of the Parliamentary proceedings*, and from the Journal, that the resolution to which the House came, was upon the motion, and in the words of Sir Edward Coke, 'That in case of any arrest, or any distress of goods, serving any process, summoning the land of a Member, citation or summoning his person, arresting his person, suing him in any court, or breaking any other Privilege of this House; a letter shall issue, under Mr. Speaker's hand, for the party's relief therein, as if the Parliament was sitting; and the party refusing to obey it, to be censured at the next access.'—It is remarkable that Sir Dudley Digges moves, 'That in consideration of payment of debts, the lands and goods of any Members, being debtors, may not be privileged during this long recess:' But this humane and just proposition was overruled. As from the debate, both on this and the day before, it appears to be universally agreed, that the Privileges of the Members continue, during an adjournment, the same as during the sitting of the House, we may consider this resolution, drawn up in the words of Sir Edward Coke, as a recapitulation of all the Privileges, which were at this time claimed by Members of the House of Commons, either for their persons or estates, and as Sir Edward Coke expresses himself "clear both for Members, and their servants."—It is curious to compare the part, which Sir Edward Coke took upon this occasion, with the doctrine that he laid down thirty years before in *Fitzherbert's Case*†, when Speaker and Solicitor General to the Queen.—We hear nothing now of Writs of Habeas Corpus, Writs of Privilege, Petitions to the King or House of Lords; but, in every Case recited in the resolution, 'or the breaking any other Privilege of the

* Page 146.

† See page 108.

‘ House,’ a letter is to issue under Mr. Speaker’s hand for the party’s relief; and disobedience to that letter is to be considered as a contempt of the House, and to be punished at their next meeting: And this is to continue during an adjournment of above five months.—Though I have a very great esteem for the character which Sir Edward Coke sustained throughout this Parliament; and am of opinion, that this country owes its freedom more to his learning and determined spirit, than perhaps to that of any other man, I could not, consistently with that fairness and impartiality which ought to guide the pen of every, even the most insignificant, writer of history, omit to remark this difference in his sentiments, according to the different situations in which he acted.

9. On the 4th of June, 1621, the House is informed of Johnson, Sir James Whitlock’s man, being arrested: The parties are immediately called to the Bar, and heard, on their knees, in their defence; and after a variety of propositions made for several degrees of punishment, it is ordered upon the question, ‘ That they shall both ride upon one horse ‘ bare backed, back to back, from Westminster to the Exchange, with papers on their breasts with this inscription, “ For arresting a servant to a Member of the Commons House “ of Parliament;” and this to be done presently, sedente ‘ Curiâ:’ And this their judgment was pronounced by Mr. Speaker to them, at the Bar, accordingly. This very new and extraordinary punishment was awarded, notwithstanding it appears from the Journal, and the Parliamentary proceedings*, that both these parties had acknowledged their fault,

* Vol. II. p. 164.

and craved forgiveness of the House, and of Sir James Whitlock.

10. On the 28th of April, 1624, a Warrant is ordered to issue from the Speaker, for a Writ of Privilege, to bring up a servant of a Member, in execution with the Sheriff of Kent.

11. On the 4th of July, 1625, the Case of Mr. Bassett is referred to the Committee of Privileges, who report on the 8th, 'that he was imprisoned upon mesne process, and afterwards 'chosen a Burges.' There is a debate in the Journal, whether under these circumstances he is eligible, or to be allowed Privilege: Great distinction is made between a person arrested on mesne process, or in execution; and it is at last resolved, upon the question, 'That Mr. Bassett shall have the Privilege of the 'House;' and a Warrant is ordered to the Marshal to bring him up the next morning, which is done accordingly.

12. On the 9th of February, 1625, a motion was made, that Mr. Giffard, returned a Member of the House, and now in execution, may be sent for. On this matter being examined into, it appears from a report of the Committee of Privileges on the 15th, 'that one of the Burgeses for Bury was elected on 'the 6th of January, that Mr. Giffard was elected on the 11th 'of January, but that the indenture was not dated till the 30th 'of January; the Town Clerk conceiving it was to bear date 'the day of the next County court; and that Mr. Giffard was 'arrested on the 23d of January, after his election but before 'the return.' After much debate and consideration of this difficulty, on the 17th of February, the Clerk of the Crown, the Sheriff

Sheriff of Suffolk, and the Town Clerk of Bury, are all called up to the Table, and there, by order of the House, amend the return from the 30th of January, to the 11th; and then it is ordered, that Mr. Giffard shall have Privilege, and be delivered out of execution; and a Warrant is issued to the Clerk of the Crown, for a Habeas Corpus to bring him up the next day: On the 18th, he is accordingly brought in, with the Keeper of the Gatehouse, the Bar down; the Writ of Habeas Corpus is handed up to the Clerk, and the Writ and Return are read by him, and then Mr. Speaker discharged Mr. Giffard, and wished him to take the oath, and then his seat in the House.

13. On the 9th of February, 1625, Complaint is made of Sir Thomas Badger's servant being arrested at his master's heels, as he came to the Parliament House. On the next day, when this debate is resumed, it is ordered, 'that the consideration of the manner of delivery of one in execution, be referred to the Committee of Privileges, for them to report to the House:' On the 15th, Sir Jo. Finch reports, that the Committee are of opinion, 'that Sir Thomas Badger's man should be delivered by Habeas Corpus, by Warrant from the House;' and accordingly the House order a Warrant for that purpose, to issue to the Clerk of the Crown, under Mr. Speaker's hand; but they at the same time declare, 'that, notwithstanding the said opinion of the Committee, the House hath power, when they see cause, to send the Serjeant immediately to deliver a prisoner.' On the 17th, he is brought up by the Keeper of the Gatehouse; and the Writ and Return being read by the Clerk, he is ordered by the Speaker to be discharged.

14. On the 16th of May, 1626, on a complaint made, that one Colley, servant to a Member, had been arrested the day before, and taken in execution and detained; it is ordered that he have Privilege, and that a Warrant for a Habeas Corpus be issued to bring him up: On the 23d, he is brought in obedience to this Writ, and discharged.

Notwithstanding the resolution which the House came to in the Case of Sir Thomas Badger's servant; 'that they have power, when they see cause, to send the Serjeant immediately to deliver a prisoner;' yet, since the end of Queen Elizabeth's reign, we have not actually met with any instance, where a person entitled to Privilege, 'if in custody in execution,' hath been delivered by any other mode, than by virtue of a Writ of Privilege, or by a Writ of Habeas Corpus, issued in obedience to a Warrant under the Speaker's hand; and indeed it should seem necessary, that there must be some formal process at law, to give the Act of the first of James I. Chap. 13. its full operation. — As the House of Commons had determined, 'that this Writ of Privilege could be issued only by virtue of a Warrant under the Speaker's hand, and that by order from the House;' Members and their servants were still liable to be arrested during an adjournment or prorogation, and were without remedy, except from the apprehensions which the party offending might be under of incurring those censures in the approaching Session, which, by Sir Edward Coke's advice, were threatened in the resolution of the House in 1621. This however not being sufficient, it appears from the Journals of both Houses, that a further remedy was in agitation, viz. "a Bill for the releasement of such privileged persons as should be arrested after the Parliament ended, but
" during

“ during the Privilege thereof *.”—On the 27th of May, 1628, a Bill was brought from the Lords, ‘ for explaining and enlarg-
‘ ing the Act of James I. touching delivering persons taken in
‘ execution; and in the next Session, on the 31st of Janu-
ary, 1628, the Lords sent down the same Bill again. Whether
the purport of either of these Bills was to carry this remedy
into effect, I don’t know; as it appears that the Commons took
so little notice of them, as never to give either of them even a
first reading.

(3.) The next general head is, the summoning of Members,
or their servants, to attend inferior Courts as witnesses, jury-
men, &c.—We have seen that this Privilege, of being exempted
from the obligation of attending in an inferior Court, had been
claimed and exercised even earlier than the Reign of Queen
Elizabeth: From what happened in the year 1584, in the two
Cases of (40.) and (41.) † the Commons found themselves
obliged to take the punishment of this breach of their Privi-
leges into their own hands, whereas, till that time, the mode
of redress had been different.

1. On the 8th of May, 1604, a Subpœna out of Chancery
being served on the person of Sir Oliver St. John; the per-
son, at whose suit it was served, was sent for by the Serjeant
to answer the contempt.

2. On the 10th of May, 1604, several Subpœnas for dif-
ferent purposes having been served upon Members; the Writs
are read, and Warrants ordered for attaching the bodies of

* See the Parliamentary History, Vol. VIII. p. 105.

† See before Page 96 and 97.

the delinquents by the Serjeant, and bringing them to the Bar to answer their contempts *.

3. On the 14th of May, 1604, Sir Edward Montagu informs the House, that he was warned to appear upon a trial at Guildhall to-morrow; and prays to know whether he should have Privilege: It is ordered, 'that he shall have Privilege,' and in the order it is expressed, 'because his said appearance must necessarily withdraw his presence and attendance upon the service of this House; and therefore it is thought fit, and so ordered, that he be excused in that behalf, according to ancient custom of Privilege.' It is observable that, though Sir Edward Montagu is stated as defendant in this cause, there is no complaint made of the suit being carried on against him in time of Privilege, but only that he was warned to appear.

4. On the 13th of February, 1605, Mr. Stepney complains, that seven days before this Session, he was summoned upon a Subpœna in the Star-Chamber: On the 14th, this matter is examined into, and referred to the Committee of Privileges; on the 15th, it is ordered, 'that Mr. Stepney shall have Privilege, and that Warren, who served the process, be committed to the Serjeant for three days.'

5. On the 12th of May, 1606, Subpœna ad Rejungendum is served on Sir Richard Bulkley: The party at whose suit, and the party who served it, are ordered to be sent for; on the 19th and 20th, Owen ap Rice who served it, and his Master, Mr. Lloyd, who delivered the process into his hands, are committed to the Serjeant.

* See the 15th of May, 1604, and 11th of February, 1605.

6. On

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6. On the 31st of March, 1607, is an entry of a letter written by the Speaker, Sir Edward Phelips, during an adjournment, for excusing Sir Edmund Ludlow and his son from attending at the execution of a commission, awarded out of Chancery, for the examination of witnesses.—And this is said to be warranted ‘by former general Order.’

7. On the 4th of May, 1607, is a complaint of a Subpœna, to answer to a prosecution in the Exchequer, on the part of the Crown, served on Sir Richard Pawlett: The Writ is read, and then the Serjeant is ordered, by his Mace, to attach the parties delinquent, and to bring them to the Bar, to receive the judgment of the House; and on the next day, the Speaker writes a letter to the Lord Chief Baron, to inform him, ‘that such a Subpœna, ad comparendum, has been
‘served upon Sir Richard Pawlett, contrary to ancient and
‘known Privilege; because the personal attendance of the
‘said Sir Richard is here necessarily required, during the time
‘of Parliament: I therefore thought good, as well to make
‘known the privilege and pleasure of the House, as to pray
‘your Lordship, that no farther process issue against him, until
‘he may have time and leisure to follow his own cause.’

8. On the 5th, 7th, and 8th of May, 1607, Subpœnas are served, and the parties are committed to the Serjeant, and to pay fees.

9. On the 6th of May, 1607, two Members inform the House, that they were returned by the Sheriff Jurors in the Court of King’s Bench: It was ordered, ‘that, by the Privi-
‘lege of the House, they should be spared from their attend-

‘ance; and Mr. Serjeant is commanded to go with his Mace, and deliver the pleasure of the House to the Secondary of the King’s Bench, the Court then sitting.’

10. On the 8th of May, 1607, a Subpœna ad comparendum was served out of the Star-Chamber upon Sir Edmund Ludlow: The Writ was read, ‘and it appeared to be at the suit of Mr. Attorney General,’ which made the question disputable; it is therefore referred to the Committee of Privileges, to consider whether he shall have Privilege or no.—I do not find that they made any report.

11. On the 19th of February, 1609, Complaint of a Subpœna out of Chancery served on Sir William Bowyer: On the 27th, the person who served the Subpœna, is brought to the Bar, and because he did it ignorantly, is discharged, paying his fees.

12. On the 21st of March, 1609, a Writ is served on Mr. Pelham, ad audiendum judicium: This is referred to the Committee of Privileges, to consider, as appears from the 5th of May, 1610, ‘whether a Plaintiff may have Privilege, on a Subpœna ad audiendum judicium being served upon him.’

13. On the 14th of May, 1621, Sir H. North produces a Subpœna: Sir Edward Coke cites a precedent of the tenth year of Edward III. ‘where the Clerk of this House had a Subpœna served upon him, and had Privilege, and the party was committed for breaking the Privilege of the House.’—It is not said where Sir Edward Coke found this precedent; but the note which is written in the original Journal, ‘that there was
‘no

'no Parliament that year,' is a mistake, as appears from the commission, which is in the fourth volume of Rymer's *Fœdera*, p. 701, dated at Newcastle the 20th of June, in the tenth year of the reign of Edward III*.

14. On the 29th of November, 1621, Subpœna served on Mr. Bruerton: Napper, who served it, is ordered to be sent for by the Serjeant; on the 30th, a Warrant for this purpose is given to the Serjeant, and also against one Minott, who had likewise served a citation on Mr. Bruerton. On the 3d of December, Napper, after debate, is committed to the Serjeant for three days, and then to be dismissed, paying his costs to Mr. Bruerton, and his due fees to the Clerk and Serjeant.

15. On the 28th of April, 1628, Sir Simeon Stuart is served with a process, at the suit of the Attorney General, *ad audiendum judicium*: He desires time to prepare for the hearing, being bound in a recognizance of five hundred pounds not to claim his Privilege; but it is ordered, that, notwithstanding his recognizance, he ought to have the Privilege of Parliament if he desire it. On the 30th, the person serving the Subpœna was sent for to answer the contempt: It was referred to the Committee of Privileges, to consider what was fit to be done about the recognizance; and Sir Simeon Stuart was enjoined by the House, to attend the service of the House, and not to attend the hearing of his cause in the Star-Chamber. On the 10th of May, a petition from the inhabitants of the Isle of Ely is presented, complaining, as appears from Prynne's fourth Register, p. 842, of this delay of trial, and desiring that he might be ordered to wave his Privilege: This

* See this commission, intitled, "*Assignatio personarum loco Regis ad inchoandum concilium suum.*"

petition is referred to a select Committee to examine, but there is no report upon it. Prynne has made some very judicious observations upon this Case, and particularly upon some doctrines laid down, in the debate upon it, by Sir Edward Coke*.

16. On the 15th of May, 1628, Sir William Alford, returned of a jury this day in the Common Pleas, is to have Privilege of Parliament not to serve; and a letter is ordered to be written by Mr. Speaker to the Judges, that he be not amerced for his not appearance.

17. On the 29th of January, 1628, A motion is made, that a Member have leave to answer a petition preferred against him in the House of Lords; but it is refused, and the Member is ordered not to answer, upon pain of the displeasure of the House, and expulsion; and the person, who preferred the petition, is sent for to answer his contempt.

18. On the 10th of February, 1628, It is ordered that a servant to Sir William Brereton, a Member of the House, shall have Privilege of Parliament, and the person, who served him with a Subpœna to answer in the Star-Chamber, to be sent for.

19. On the 10th of February, 1628, Mr. Rolle informs the House, that he had the day before a Subpœna from the Attorney General served upon him, to appear in the Star-Chamber; but that he had in the evening received a letter from the Attorney General, excusing this by the mistake of his messenger, and promising to withdraw the information.

* Fourth Register, p. 843.

The House, without permitting the letter to be read, immediately resolve, ' that Mr. Rolle shall have Privilege, and that ' the person who served the Subpœna, shall be sent for to ' answer his contempt.'

These are the principal Cases, which occur during this period, of complaints of Subpœnas, and other processes being served upon Members, by which they might be withdrawn from attending their duty in the House. Whoever will consult the Journals of the House of Commons will find several other instances of a similar kind, which I have purposely omitted, as they are little more than a repetition of some of those I have inserted: Even many of these might perhaps have been more properly introduced under the next general head, as they are, in substance, rather complaints of being compelled to plead, than of being obliged to make a personal appearance*; there are, however, among these, sufficient instances to shew, that at this time the House of Commons had established it to be one of their undoubted Privileges, that the Members should be at perfect liberty to attend the service of the House, and that no call of an inferior nature, or obedience to the summons of an inferior Court, should be permitted to interfere with this, their first, their principal and most important duty.

(4.) The next general head, is that of prosecuting of suits at law against Members, or their servants.—I have observed

* It has been properly suggested to me, as in the case of *jurors* and *witnesses*; or that there is some confusion between these heads: It is not always possible, from the shortness of the entry, to distinguish, whether the summons is to attend personally, whether it is only a *notice of trial*; especially in the proceedings of the Star-Chamber, where, even in civil cases, the Court exercised a sort of criminal jurisdiction.

before, that except in the instance of the 21st of February, 1588, (N^o 45.) I have not hitherto met with any complaint in the Journals of a breach of this Privilege: But from the commencement of the Reign of James I. they became very frequent, upon this principle, 'That, during the attendance of Members in Parliament, it was impossible for them to go down to the Affizes, or to the other Courts of Law, to defend those suits; besides, that it was inconvenient that their attention, from the more weighty business of the Public for which they were summoned, should be distracted by avocations of a private and less important nature.'—As the law had provided no remedy for this inconvenience but a Writ of Superfedeas, the House of Commons in many instances order a letter to be issued under the Speaker's hand for stay of trial: what reception these letters met with, and the progress of this claim of Privilege, will be seen from the following Cases.

1. On the 19th of March, 1605, Mr. Speaker moveth the House, that Sir Thomas Strickland, having a cause at trial at York Affizes, may be privileged in stay of the said trial: This is assented to by the House, and a letter is ordered to be written by Mr. Speaker to Mr. Baron Savill.

2. On the 2d of February, 1606, in a cause depending in the Court of Wards and Liveries, in which a servant of the Speaker's was interested as Assignee of the Ward, the Speaker writes a letter, and this during an adjournment, to the Surveyor of the Court: 'that his servant, being his Clerk, and a necessary and daily attendant, should be excused from being compelled from being joined in commission with the Plaintiff,

• Plaintiff, his Privilege being now as warrantable as in the
• time of sitting *.

3. On the 26th, 27th, and 28th of February, 1606, are several letters from the Speaker to the Justices of Assize, for the stay of trials in which Members were interested, 'as in other
' the like Cases hath been usual:—And, as the Speaker expresses it, 'fearing lest the cause might receive some prejudice
' by the absence of the Member, or withdraw his attendance
' from this great service, which is the principal care of his
' Majesty and the House to prevent;' a general authority is therefore, on the 27th, given to the Speaker to write these letters, for stay of proceeding against any Member that would require it.

4. On the 13th of May, 1607, the House was informed, that a Member of the House stood outlawed at the suit of one Palmer; and that Allen, the Attorney in the suit, did threaten to proceed to trial: The Plaintiff and Attorney are both ordered to be brought to the Bar by the Serjeant.

5. On the 13th of May, 1607, upon information of an attachment being served upon the person of a Member, the Speaker writes to the Plaintiff's Attorney, directing him to foresee, 'that no farther process issue against the Member:' And, on the 6th of June, the person who served the Writ, and the Plaintiff, are sent for by the Serjeant, 'as is usual in
' such Cases.'

6. On the 20th of May, 1607, the Speaker writes a letter, during an adjournment, to the Lord President and Council

* It appears from the Journals, that the House had adjourned from the 18th of December, to the 10th of February.

at York, for stay of the proceeding of a cause depending before them, in which the tenants of a Member are defendants.

7. On the 10th of June, 1607, a letter is ordered to be written by Mr. Speaker to the Barons of the Exchequer, 'in form as hath been accustomed in like Cases,' for stay of a trial, in which a Member was defendant: On the 13th, the Plaintiff complains of the hardship he suffers by this delay, and prays by petition, that there may be no further stay of proceeding; but the petition being read, and understood, the former order of the House was notwithstanding affirmed.— This, and the letter in the Case of Sir Richard Pawlett, on the 4th of May, 1607, are the first instances of letters written to any of the superior Law Courts of Westminster Hall, the former being to Justices of Assize, or to inferior Courts. It appears from a complaint made by Sir Robert Johnson, on the 4th of July, that the Plaintiff, Sir Robert Brett, finding he could get no redress by course of law, had employed force, and had entered upon the house and goods in question, and kept possession by force and violence; but, says the Journal, 'No order ensued upon this;' and upon that day the Parliament was prorogued.

8. On the 16th of June, 1607, on complaint of a Writ issued in the Court of Common Pleas, for levying issues against a Member for default of appearance; it is ordered, 'That if the issues are not discharged before the next night, the parties delinquent, that is, the Attorney, the Solicitor, and the Under Sheriff, shall be brought in by the Serjeant to answer their contempt.'

9. On the 26th of April, 1610, are several orders for stay of trial, and one of them in the Court of King's Bench.

10. To

10. To prevent these repeated and almost daily applications to the House, on the 17th of February, 1620, a general order is made, 'That where any Member hath cause of Privilege, to stay any trial, a letter shall issue under Mr. Speaker's hand, for stay thereof, without further motion in the House.'—On the 1st of March, a motion is made about the form of these letters, and the Committee of Privileges are directed to view precedents, and to consider of the course and manner of writing and entering them: On the 3d of March, Sir George Moore reports from the Committee, that they have found several precedents, in the King's time, of these letters, and that they are recorded in the Journal Book: This course of writing letters to the Justices of Assize is ordered to be continued, and, if required, a Warrant for inhibition to the party.—It should seem by this report from the Committee of Privileges, that the practice of writing letters for the stay of trials took its rise after the accession of James I.

11. This general order related only to letters to Justices of Assize; for in the same Session, on the 1st of June, 1621, a letter is ordered to be written by Mr. Speaker, to the Court of the Duchy, for stay of a suit concerning Sir Francis Popham's inheritance.

12. Although it was intended to adjourn from June to November, instead of a prorogation, in order that some very important Bills, Enquiries, and Prosecutions, in which the Commons were at this time engaged, might not be interrupted; and though, by so long an adjournment, every argument, that had been employed for the establishment of this Privilege of staying suits against Members, or their servants, was taken away; yet we see from the Journal of the 1st of June,

1621, and from the printed debates of this Session, that it was the opinion and advice of Sir Edward Coke, Mr. Noy, Mr. Hakewill, and others, very respectable Members of this House of Commons; 'that during this adjournment, no suits against Members, or their servants, should be proceeded in, in any Court of Law; and if they were, that a letter should issue under the Speaker's hand, for the party's relief therein, as if the Parliament was sitting, and the party refusing to obey it, to be censured at the next access.' And an order was made accordingly, and probably executed, though the adjournment was for above five months, from the 4th of June, to the 14th of November.—I confess that this appears to me to have been a very extraordinary extension of this claim of Privilege. We have seen, that the claim itself began but since the commencement of this Reign, or, at least, that the power of staying suits, by a letter from the Speaker, had never been exercised before the accession of James I. The reasons given in these letters, 'that the Member might not be withdrawn in his attendance from the service of the House,' did not apply in an adjournment of five months, and must have been productive of great inconveniencies to the suitors of the several Courts.—The order which was made upon this occasion, and which appears to have been dictated by Sir Edward Coke, is worth remarking, from its comprehending every sort of Privilege, to which a Member of the House of Commons was at this time thought to be entitled*.—As it was intended that this adjournment of the Par-

* Though this order is inserted before, I have repeated it here: 'That if any arrest, or any distress of goods, serving any process, summoning his land, citation or summoning his person, arresting his person, suing him in any Court, or

breaking any other Privilege of this House, a letter shall issue under Mr. Speaker's hand for the party's relief therein, as if the Parliament was sitting, and the party refusing to obey it to be censured at the next access.'

liament

liament should be by the King's commission, doubts arose, whether this circumstance made any alteration in the state of Committees and other business, from what the usual adjournment of the House by itself would have done. The King had proposed to the Lords to take the opinion of the Judges upon this point, and several messages and conferences had passed between the two Houses upon this subject: in one of these debates, Mr. Alford says, ' Heretofore the Judges have been ' very wary, and would not meddle to deliver their opinion ' of what belongeth to the jurisdiction of a Parliament; I ' would have them warned of it, for it were dangerous for the ' state and liberty of the subject, if the Parliament should ' stand on the opinion of the Judges; it is usual that the Par- ' liament hath judged the actions of the Judges, but never, ' that the Judges have meddled with the state or business of ' a Parliament: I desire therefore, that they may have a ' warning, how they censure, or deliver their opinion of ' the Privileges of Parliament.' When the commission is brought down from the Lords, by the Chief Baron and several of the Judges, the Commons decline to have it read; but at the same time, taking notice of the commission, and of his Majesty's pleasure, signified to them by the Judges, ' that ' all Committees, and other Parliamentary business, should ' rest in the same state, till the next meeting;' the House resolves to adjourn itself accordingly; and then, Sir Edward Coke standing up *, with tears in his eyes, recited the Collect for the King and his children, and desired the House to say after him; adding only to it, " and defend them from their " cruel enemies:" And then the Speaker adjourned the House, saying, " This House doth adjourn itself till the 14th of No- " vember next †."

* This venerable old patriot was at this time upwards of seventy years of age. 1621, and the second volume of the printed debates of this Parliament.

† See the Journal of the 4th of June,

13. I do not find any general order made at the beginning of the Parliament of 1623; but on the 27th of February, in the second * Journal of this Session (which is, in many instances, more compleat than the first) a motion is made to stay a trial, in the behalf of Sir John Eliot, and a Warrant is ordered to go out. Indeed there are few Cases upon this head in the course of this Session: The House of Commons were engaged in business of too great importance, to attend to matters of an inferior nature; they were pulling down those enormous grievances to the subject, patents and monopolies; and were employed in attacking the exorbitant increase of power in the King and his favourites, by the impeachment of Lord Middlesex, Lord High Treasurer; a work, as appears from the sixth volume of the Parliamentary History, of considerable length and difficulty.

14. On the 5th of July, 1625, Mr. Speaker is ordered to write a letter for stay of a suit in the Star-Chamber; and the contempt is referred to the Committee of Privileges.—Sir Edward Coke says, ‘that in the seventeenth year of Edward IV. informations by the Attorney General, in the King’s own name, were stayed by order here.’ The only Case that happened, in that Parliament, to which Sir Edward Coke could allude, is Atwyll’s Case, (N° 17.) where the proceedings were not stayed by an order of the House of Commons, but reversed by Act of Parliament.

15. On the 17th of February, 1625, Sir Robert Howard, during Privilege of Parliament, was excommunicated for not taking the oath ex officio: This matter is referred to the examination of a select Committee, and on the 21st of March, Mr. Selden reports the proceedings of the High Commission

* There are two separate Journals preserved of this Session; which are both in the first volume of the printed Journals.

Court, from whence the process issued; the only doubt was whether, on account of the adjournment, this process had issued in the time of Privilege: It is resolved, nem. con. 'that he ought to have had Privilege *;' and on the 10th of June, Sir George Moore informs the House, 'that he was present at an High Commission Court, where seven Bishops were present, and knoweth, that all the proceedings against Sir Robert Howard, from the 1st of February, in the twenty-second year of Jac. I. were frustrated and made void;' and Sir Harry Martin affirmed, 'that the order of the House was there read and allowed, and all ordered to be there done accordingly.'—In the debate upon this question, Mr. Selden says, 'It is clear that breach of Privilege in one Parliament, may be punished in another succeeding.'—The Case of Bogo de Clare, (N° 2.) and the Writs of Superseatas, (N° 3.) are cited by Mr. Noy, in his argument for the Privilege of Sir Robert Howard. Mr. Selden mentions the Case of the Countess of Warren, which I have referred to before †, with Mr. Prynne's very judicious observations upon it.

16. On the 25th of February, 1625, Sir Harry Martin hath privilege in a suit between him and the Bishop of Oxford: A letter is ordered to issue under the Speaker's hand, to the Lord Keeper, to stay the hearing and proceeding; and a select Committee is appointed to consider of the contempt, and what course is to be taken.

17. In the fourth Register, p. 810, Prynne reports the Case of Hodges and Moore, in the first year of Charles I. as follows: 'Moore, having the Privilege of Parliament, procures the

* See the further proceedings in this Case, in the Journal of the 29th of April, and 3d of May.

† See the Note, p. 6.

‘ Speaker, Sir H. Finch, to write his letter, in the name of the
 ‘ Parliament, to the Court of King’s Bench, to stay judgment :
 ‘ The Court was greatly offended at this, and would have re-
 ‘ turned a sharp answer to the Parliament, if it had not been
 ‘ dissolved, because it is against the oaths of the Judges to stay
 ‘ judgment, nec per Grand Seal, nec per Petit Seal per le sta-
 ‘ tute ; but the way in such case is to procure a Superfedeas,
 ‘ which is a special Writ appointed in these cases : and this is
 ‘ to be allowed, being the legal course : But the letter is not to
 ‘ be regarded.’—And in another report of this case, the effect
 of this letter was disallowed by the whole Court, and the
 Court said, ‘ the defendant ought to have brought a Writ of
 ‘ Privilege ; and when Thorpe, who was Speaker, had a Su-
 ‘ perfedeas for all actions, this was bad ; for he ought to have
 ‘ had a particular Superfedeas for each action : And the Par-
 ‘ liament hath privilege for the person, but not for the pro-
 ‘ ceedings by any letter.’ Lord Chief Justice Crewe (who had
 been himself Speaker) said, “ Que il voet estoyer sur le Jus-
 “ tice del Court : Et si, come ils estoyent sur leur Priviledges,
 “ issint nous voylomis ; en ascun Cases poent ils restreyn le
 “ Counsel del party, ou le party luy mesmes, mes nemy le
 “ Court, que n’est lye de prendre notice sans special breve,
 “ mes les partyes queux prosecute sont en danger.” This
 Case is reported in Latch*, and in Noy there is a very short
 note of it†. It appears upon the Journals of the 20th of
 May, 1626 ; and it is referred to the select Committee, to
 whom Sir Robert Howard’s Case had been referred. This
 Committee make no report, and the Parliament is dissolved
 upon the 15th of June. If the Judges had continued of the
 same mind, which the reporter, Latch, says they were, “ to

* Page 15, 48, and 150.

† Page 83.

“ have

“ have written a sharp answer to the Parliament ;” it is probable that that House of Commons, which had compelled the High Commission Court “ to vacate and annihilate” all their proceedings against Sir Robert Howard, when in breach of their Privilege, (proceedings subscribed by the Lord Archbishop of Canterbury, Lord Keeper, Lord President, Lord Lincoln, and several others,) would not have quietly acquiesced in this disobedience of the Court of King’s Bench to an order, which, from the beginning of the century, had been sent to all the Courts of Westminster Hall, and, as far as appears, had been always attended to.

18. The Case of Sir Thomas Hubbeck, cited in the fourth Register, p. 845, can be no other than that in the Journal of Sir J. Hotham, of the 13th of June, 1628. This Parliament sat on, with a prorogation intervening, till the March following, and there is no complaint of the Speaker’s letter being disobeyed.

19. On the 29th of January, 1628, Mr. Speaker is ordered to write a letter to the Court of Chancery, for the suppressing of depositions taken in a cause between Sir Henry Bagot and Sir Edward Littelton, by virtue of a commission executed the first day of the Session.

I need not repeat what I said at the conclusion of the former head, that these are the principal, but a very small part in number, of the Cases which are to be found in the Journals upon this subject : It is observable that, during this period, there is not a single instance of a Writ of Superfedeas being applied for, or issued by Warrant from the Speaker, though this would have been absolutely necessary, if the Courts of Law had always

ways held the language of Sir Randolph Crewe, in the Case of Hodges and Moore. The House of Commons were satisfied with having introduced a more summary method of staying the proceedings, by the terrors of their own authority, and having thereby shaken off all dependance upon the Courts of Law, for their issuing or obeying the Writ of Superfedeas.

(5.) The next general head, is the taking the goods or effects of a Member, in execution, or otherwise.

I have already stated at large the Case of the Master of the Temple, (N^o 1.) that of the Prior of Malton, (N^o 5.) and Atwyll's Case, (N^o 17.) in the latter of which, the claim of the Commons 'not to be attached in their goods,' seems by the King's answer to be admitted. From this time, viz. from the year 1477, to the Reign of James I. I find no claim of this sort made, nor any complaint in the Journals, or elsewhere, of this Privilege being infringed.—This is the more remarkable, as the claim of securing their necessary goods and chattels seems to be a very reasonable one, and was probably never laid aside; and yet it is difficult to suppose, that no Case occurred in a period of one hundred and thirty years, in which this Privilege could be brought in question: I would therefore by no means be understood to assert, that no such instance exists, but only that, in the opportunities I have had of consulting the Journals, and other Parliamentary Records, I do not find any, but the three Cases I have mentioned, prior to the Reign of James I.

1. On the 24th of March, 1603, a cloak is taken from a Member's servant, and left at a Tavern in lieu of payment; the Vintner and his servant, who kept the cloak by force from
the

the owner, are committed to the Serjeant, and on the 5th of April are discharged.

2. On the 26th of February, 1606, the Speaker writes a letter to the Sheriff of Hampshire, on his having caused a seizure to be made of the goods of Sir William Kingswell, a Member; these goods, being seized in the country, could not be brought within the words of the claim, in Atwyll's Case, 'of goods and chattels necessary to be had with him;' and therefore the Speaker in this letter lays down the rule more at large, 'That the Privilege of Parliament, during the time of service there (haply not so well known to yourself) reacheth as well to the goods, as person of every Member attendant for the time; I am therefore to advise and require you, that you forthwith procure the restitution of the said goods, according to the said Privilege, lest that question and danger grow upon it, which I would be loth you should undergo.' By the expression, 'haply not so well known to yourself,' it should seem, that this claim had not been frequently made, or to this extent, or it is difficult to imagine that the Sheriff of a neighbouring County, making a distress or taking goods in execution, would have been ignorant of it; it is probable the Sheriff, Sir William Oglander, took the Speaker's advice, as the Session continued till July, and we hear no more of this matter.

3. On the 12th of March, 1606, a Member's horse being taken away for the use of the post; the post-master, and the servant who took the horse, are ordered to be brought to the Bar by the Serjeant the next day: They are brought accordingly, and the servant is, for his contempt, committed to the Serjeant, during pleasure. On the 23d of March he is set at liberty; though at this time the Speaker was detained by sickness,

sickness, for several days, from attending the service of the House*.

4. On the 14th of May, 1628, a servant of a Member has Privilege for his goods, distrained by Sir Nicholas Row, and a Warrant for those which distrained them.

5. On the 22d of January, 1628, Mr. Rolle complains of his goods being seized by an officer of the customs for dues; and this complaint is immediately referred to the consideration of a select Committee†.—The substance of this Case was, that these goods were seized by the customers, or those who had a lease of the customs, to a considerable amount, and belonging to Mr. Rolle, for refusing to pay the duties of tonnage and poundage, which the Commons had not yet granted to the King; but which the King, as appears from his Warrant, in the eighth volume of the Parliamentary History, p. 311, had directed to be levied by his own authority.—The Commons seem to have wished not to have brought the King's authority into dispute, but to suppose the customers to have made this seizure, by virtue of their lease, without any Warrant from the Crown; and that the resentment of the House should have been directed only against those officers, for this violation of their Privileges: But the King, with his usual imprudence, sends a message on the 23d of February, by Mr. Secretary Cook, in

* The entries in the Journals for several days begin, *Absente Prolocutore*.—But it appears that very little business was done, except the appointing a Committee to consider of such precedents, as could be found, for the proceeding of the House, in the absence of the Speaker; this Committee make no report, as the Speaker returns the next day.

† In the eighth volume of the Parliamentary History, p. 247, and 254, et seq. there is an account of this transaction, published from a Book, collected by Sir Thomas Crewe, and which the Compilers of that History say is fuller than what is in Rushworth, Vol. I. p. 642. et subf.

which

which he avows, ' that what had been done was in obedience
' to his special order in council; and that it concerned his
' Majesty, in high degree of justice and honour, that truth
' be not concealed, and therefore he would not have the act
' of the customers divided from his act.' Notwithstanding
this message, the House of Commons, upon the report from
the grand Committee upon this violation of their Privileges,
resolve, (1.) That every Member of this House is, during the
time of Privilege of Parliament, to have Privilege for his goods
and estate; (2.) That the 30th of October last was within the
Privilege of Parliament*; and (3.) That Mr. Rolle ought to
have Privilege for his goods seized the 30th of October last,
the 5th of January last, or at any time since.—It was in this
Session, though not upon this question, but upon matters of
religion, that Oliver Cromwell first appears to have taken part
in the debates †.

(6.) The
* The Parliament had been prorogued
from the 26th of June, to the 20th of Oc-
tober, and then further prorogued to the
20th of January.

† See, in the first volume of Rushworth,
p. 655, the first speech, which this extraor-
dinary man appears to have made.—The
following extract from Sir Philip War-
wick's Memoirs, p. 247, is very curious.—

' The first time that ever I took notice of
' Cromwell, was in the very beginning
' of the Parliament held in November,
' 1640, when I vainly thought myself a
' courtly young Gentleman; (for we Cour-
' tiers valued ourselves much upon our
' good cloaths) I came one morning into the
' House well clad, and perceived a Gen-
' tleman speaking (whom I knew not) very

' ordinarily apparelled, for it was a plain
' cloth suit, which seemed to have been
' made by an ill country taylor; his linen
' was plain, and not very clean; and I re-
' member a speck or two of blood upon
' his little band, which was not much larger
' than his collar; his hat was without a
' hat-band; his stature was of a good size,
' his sword stuck close to his side, his coun-
' tenance swoln and reddish, his voice
' sharp and untunable, and his eloquence
' full of fervor.—Yet I lived to see this
' very Gentleman, by multiplied, and good
' successes, and by real (but usurpt) power,
' (having had a better taylor, and more
' converse among good company) in my
' own eye appear of a great and majestic
' deportment, and comely presence.' And

in

(6.) The sixth and last general head of Cases of Privilege, within this period, is the assaulting or insulting a Member, or his servant, or traducing his character.

I have taken notice before of such instances as occurred prior to the Reign of James I. of this breach of Privilege, and of the measures taken by the House of Commons to punish them.

1. On the 19th of March, 1603, Complaint is made of Bryan Tash, a Yeoman of his Majesty's guard, who, on the House of Commons going into the House of Lords, stopt Sir Herbert Croft, and shut the door upon him, saying, 'Good-man Burgefs, you come not here:' Some debate arose how the House ought to proceed; but on the 22d, he is committed to the Serjeant, and on the 23d, he is brought in custody to the Bar, and on his submission and confession of his default, is discharged with a warning from the Speaker, paying his fees.

2. On the 26th of April, 1604, Mr. James, of Bristol, complains of some contemptuous expressions used of himself by Sir Richard Browne: The next day, he produces a witness at the Bar, in support of this complaint; 'but the words

in Bulstrode's Memoirs, p. 192.—' This conference puts me in mind of what Mr. Hampden said to the Lord Digby, in the beginning of the war. As they were going down the Parliament stairs, Cromwell going just before them, the Lord Digby (who was then a great man in the House of Commons) ask'd Hampden, Who that man was? for I see, saith the Lord Digby, he is of our side, by

' his speaking so warmly this day. Upon which Mr. Hampden replied, That slovenly fellow which you see before us, if we should ever come to have a breach with the King, (which God forbid) I say that sloven, in such case, will be one of the greatest men of England—which was a prophetic speech. But Hampden knew him well, and was intimately acquainted with him.'

' were

‘ were construed to be of small weight, and therefore pardoned
‘ by the House.’

3. On the 16th of June, 1604, Complaint is made of one Rogers, for abusing Sir John Savill in slanderous and unseemly terms, upon his proceeding as a Committee, in the Bill touching tanners and curriers: Rogers is ordered to be brought by the Serjeant to the Bar on Monday next, but probably was not to be found, as I find no further entry in the *Journal*, during this Session.

4. On the 12th of February, 1620, Mr. Lovell complains, that one Dayrell had threatened his person: He is ordered to be sent for by the Serjeant; the same day he is brought to the Bar, but denying that he spake the words charged upon him, he is ordered to attend again the next day with his witnesses; he accordingly attends on the 13th, but one of his witnesses being a woman, Mr. Crewe and Sir Edward Coke oppose her being called in, very gravely objecting, on the authority of St. Bernard, ‘ That a woman ought not to speak in the congregation.’ A Committee is therefore appointed to go out, and examine her at the door; and Sir Edward Gyles reports the examination, and Dayrell is ordered to be committed to the Serjeant, and then to come and acknowledge his fault, which if he does not do, then to be committed to the Tower.

5. On the 15th of March, 1620, Complaint is made that one Bryers, a Register, had affronted and threatened Sir Richard Gifford: He is ordered immediately to be sent for by the Serjeant.

6. On the 28th of April, 1626, Mr. Crooke complains, that Sir Thomas Horwood reviled him, saying, ‘ That he

‘ came to be a Member of this House by bribery and corruption.’ Sir Thomas Horwood is ordered to be sent for to answer the said words.

7. On the 14th of April, 1628, information is given, that a Lord, viz. the Earl of Suffolk, had said, ‘ That a gentleman of this House (innuendo Mr. Selden) deserved to be hanged for raising a record,’ with some other speeches to the like purpose. Sir John Strangways acquainted the House, that he was present when Lord Suffolk used these expressions; upon which, Sir Robert Phelips is ordered to go up with a message to the Lords ‘ to desire justice from the Lords against the Earl of Suffolk, for the wrong done to the House of Commons in general, and to a Member thereof, Mr. Selden, in particular, employed in their service:’ The message, as delivered by Sir Robert Phelips, is in the Lords Journals of this day; and the messengers being withdrawn, ‘ the Earl of Suffolk protests upon his honour, and upon his soul, that he never spake those words to Sir John Strangways.’ Upon this denial, the House of Commons appoint a select Committee to consider of the words, and to make further enquiry into the proofs: On the 15th, ‘ Sir John Strangways publicly avows the words, and that the Earl of Suffolk spake them positively; Sir William Owen also informs the House, that Sir Christopher Nevill yesterday told him, that he also heard Lord Suffolk speak the words charged upon him.’—On the 17th, Sir John Eliot reports from the Committee the evidence that had come out before them, and their resolutions, to which the House agree; ‘ That the Earl of Suffolk, notwithstanding his denial, has laid a most unjust and scandalous imputation upon the House; that they are fully satisfied, that Sir John Strangways hath affirmed nothing but what is most certain and true; and that these particu-

‘ lars

‘ lars shall be again presented to the Lords, and the Lords
 ‘ be desired to proceed in justice against the Earl of Suffolk,
 ‘ and to inflict such punishment upon him, as so high an
 ‘ offence against the House of Commons doth deserve.’ It
 appears from the Lords Journals, that when Sir John Eliot
 delivered this message, he referred to several Lords who were
 present at the conversation, ‘ and who, the Commons had
 ‘ cause to believe, could justify the same.’ The House of
 Lords promise to take this message into consideration, and
 to return an answer, in due time, by messengers of their own;
 but I do not find that any thing further was ever done upon
 this matter.

I have now gone through the several heads, under which
 I had classed the Cases of Privilege, from the accession of
 James I. to the end of the Parliament of 1628; but there
 are still to be found, in the Journals of the House of Com-
 mons, some other instances, as well in this as in the former
 periods, which having omitted to insert in their proper place
 in the course of this Work, I shall now give to the Reader,
 observing only the order of time in which they occurred*.

* It has been observed, that these Cases would have been more properly inserted under the several heads, to which they relate.—It is very true: but as they occurred to me, after I had finished the former part of the Work, and as it would have required more trouble, than I thought such an alteration would deserve, I trust I shall be excused in giving them in the form in which they appear.

C H A P. IV.

ADDITIONAL CASES BETWEEN THE YEAR 1549 AND
THE YEAR 1628.

1. **O**N the 5th of November, 1549, it is ordered, that Mr. Hare, and several other Members, shall excuse the appearance of Mr. Palmer, Burgefs, before the Justices of the Common Pleas, returned in attaint.

2. On the 18th of February, 1557, Mr. Marsh, one of the Burgeffes of London, complained that Mr. Wylde, Burgefs of Worcester, had slandered him to the drapers of London: This matter is referred to a Committee, for them to examine and report.

3. On the 15th of April, 1559, Trower a servant to the Master of the Rolls, is ordered to attend, to answer to certain evil words, spoken by him against the House: He attends on the 17th, and is charged with saying, against the state of the House, 'That if a Bill were brought in for women's wyers
' in their pastes, they would dispute it, and go to the ques-
' tion;' for which offence, though he denied the words, he is committed to the Serjeant's keeping.

4. On the 10th of April, 1606, Motion for Privilege, for one Sayre, servant to the Clerk: On the 3d of May, it is ordered, ' That Sayre, servant and bag-bearer to the Clerk, ' being arrested the 20th of November last, upon an execution, be, by order and judgment of the House, discharged *.'

5. On the 31st of March, 1610, Mr. Craford, coming into the House, and standing awhile, not being a Member, is, after much debate, admonished by Mr. Speaker for his contempt, kneeling on his knees at the Bar; and then the House, in favour, was content to remit him †.—And on the 5th of March, 1557, Mr. Perne, affirming that he is returned a Burgess for Plympton, but having brought no Warrant thereof to the House, nor being returned hither by the Clerk of the Crown by Book or Warrant, is awarded to be in the custody of the Serjeant, till the House have further considered ‡.

6. On the 17th of May, 1614, Mr. Martin, Counsel for the Virginia Company, having, in his speech at the Bar, offended the House by taxing the last Parliament, is ordered to be brought to the Bar, and reprimanded by the Speaker; but, ' though the practice of the House required that he should receive this judgment upon his knees,' yet from a regard to his former services in the House, when a Member, this order is dispensed with, and Mr. Speaker is to charge him, standing; and the next day, the 18th, the Speaker accordingly reprimands him standing at the Bar, and he makes a very humble submission.

* Note, the Parliament was prorogued from the 9th of November, to the 21st of January.

† See a similar instance of the 13th of

February, 1575, 23d of January, 1580, and many others.

‡ See also the Case of Bukeley, 14th of May, 1614.

7. On the 25th of May, 1614, there is a complaint of some words, reflecting on the honour of the House, that had been used by the Bishop of Lincoln*: Different methods were proposed of proceeding to have satisfaction for this affront; but at last it is agreed to appoint a select Committee, to consider of the words, 'the ground thereof, and the fittest course to take by search of precedents, or otherwise.' On the next day, Mr. Hakewill reports the matter, and the words; and, after much debate upon what had been the practice of the House in similar Cases, the House resolve to send a message to the Lords, and to forbear proceeding in all other business, save this, till they have an answer from the Lords: This message, which is carried by Sir Edward Hobby, is in the Journal of the House of Lords of the 28th of May, to which the Lords return for answer, 'That they will take the message into consideration, as the weight thereof requireth; and will have respect both to their own honour, and the honour of the House of Commons, and will send an answer, as soon as conveniently they may, by messengers of their own.' On the 30th of May, the Lords send another message to the Commons relative to this matter; to which, on the 31st, the Commons reply, repeating their former complaint, and concluding, 'That now the Knights, Citizens, and Burgeses, of the Commons House, do desire the Lords, if the words were not spoken, so to signify to that House; otherwise, if they were used, then they hope their Lordships will do as they promised; lastly, that the Commons know not, what other course they could have taken, to bring the matter to examination, nor otherwise how any undutiful speech which may

* See this Case again in the 3d volume, under title, "Proceedings between Lords and Commons, where the Rights

"and Privileges of either House are concerned," N^o 4.

‘ be uttered in this House, or in theirs, can be called in
 ‘ question.’ Upon this message, the Bishop of Lincoln en-
 treated the Lords, that he might be heard to expound himself;
 which being granted to him, ‘ he did make solemn protesta-
 ‘ tion, upon his salvation, that he did not speak any thing
 ‘ with evil intention to that House; expressing, with many
 ‘ tears, his sorrow that his words were so misconceived and
 ‘ strained further than he ever meant.’ Upon which sub-
 mission and ingenuous behaviour, the Lords are satisfied,
 ‘ that however the words might sound, the Bishop’s intention
 ‘ was not as it hath been taken;’ and they accordingly assure
 the Commons, ‘ That if they had conceived the Bishop’s
 ‘ words to have been spoken, or meant to cast any aspersion
 ‘ of sedition or undutifulness upon that House, their Lord-
 ‘ ships would forthwith have proceeded to the censuring and
 ‘ punishing thereof with all severity. Nevertheless, their
 ‘ Lordships think fit to signify, that although they have been
 ‘ careful at this time to give them contentment, for the bet-
 ‘ ter expediting his Majesty’s business; yet their Lordships
 ‘ are of opinion, that hereafter no Member of their House
 ‘ ought to be called in question, when there is no other
 ‘ ground thereof but public and common fame only.’ Upon
 this message the Commons were satisfied, and returned to
 business*.

8. On the 27th of April, 1621, Sir Edward Coke reports
 the Lady Coppin’s petition; that Sir William Cope con-
 fented she might sue him at law: Upon which, it is resolved,

* This Bishop of Lincoln was the fa-
 mous Dr. Richard Neil, who was afterwards
 advanced to the Bishoprics of Durham and
 Winchester; and who, in the Remon-

strance presented by the Commons to
 Charles I. in 1628, was complained of, to-
 gether with Bishop Laud, as being a fa-
 vourer of Arminianism.

‘ that she may proceed ; and Sir William Cope, by his own
‘ consent, to have no Privilege of the Parliament.’ On the
21st of June, 1625, another petition from the same Lady is
tendered against Sir William Cope ; and on the 22d, a pe-
tition from Sir William Cope is read, and, by a general voice,
rejected.

9. On the 21st of November, 1621, one was taken at the
rising of the House, with a pistol charged with three bullets,
who had abused a Member, and called him Knave ; and said,
he would kill one of the House before he had done : He is,
by Sir Edward Coke’s advice, committed close prisoner to
the Gatehouse, and a Committee is appointed to examine him.

10. On the 14th of April, 1624, one Arnold, master of the
Felt-makers, that came to prefer a Bill to the House, is taken
by a Serjeant, and committed to the Fleet : On the 12th of
May, he petitions the House, and it is ordered, ‘ That the
‘ Felt-makers, now imprisoned in the Fleet, shall be enlarged,
‘ and have the Privilege of the House, eundo, redeundo, et
‘ morando, for the prosecution of their Bill ;’ and the Com-
mittee of Privileges are to examine, whether the former ar-
resting of these men was an impeachment to the Privileges
of the House. On the 28th of May, Mr. Glanville reports,
that the Committee had no time to examine this petition ;
and it is therefore resolved to let it rest in statu quo, till next
Session.

11. On the 11th of April, 1628, ‘ a Book in print, con-
‘ cerning some proceedings in Parliament :’ It is referred to
Sir Edward Coke, and several other Members, to consider
whether this Book is fit to be read in the House ; and if it is,
then

then they are to send for any to inform them, who printed it, and by what allowance.—I do not find that this Committee made any report.

12. On the 22d of April, 1628, one Pemberton, a Brewer, ordered to attend: On the 25th, the Speaker informs the House, that he said, he would not come; upon question, to be presently sent for by the Serjeant; but on the 30th, he is discharged, the words being denied, and not proved.

13. On the 1st of May, 1628, Privilege is granted to Henry Billingsley, to go abroad with his Keeper, to instruct his Counsel, and prosecute his petition*.

14. On the 8th of May, 1628, Sir Edward Coke moveth, that Pecke, being ordered by the Committee of Grievances to bring in his patent, hath contemned it: The Serjeant is ordered to go for Pecke, to bring in his patent, and to answer his contempt; on the 12th, he petitions, and is discharged, bringing in the patent, &c.

15. On the 21st of February, 1628, one Burges, who had called some of the Parliament men, 'Hell hounds and Puritans,' is ordered to be presently sent for by the Serjeant; and a Warrant likewise to go for the parties that are witnesses against him.

* See the 24th of June.

C H A P. V.

C O N C L U S I O N.

I Have thus given at large the several Cases, relative to the Privileges of the Members of the House of Commons, and their servants, from the earliest times to the end of the Parliament of 1628, and have made such observations as have occurred to me upon them.—We have seen in what manner the Commons were, at different periods, obliged to claim new Privileges, and exert new modes of maintaining and defending those Privileges, in proportion as the lengthening the duration of the Session made other avocations inconvenient and incompatible with their first duty, and as the increase of their consequence in the state, and their influence in the management of public affairs, rendered them more an object of the attention of the Ministers of the Crown.—The principal view, which the House of Commons seem always to have had in the several declarations of their Privileges, was this, ‘ of securing to themselves, (1.) their right of attendance in Parliament, unmolested by threats or insults of private persons ; (2.) their thoughts and attention undisturbed by any concern for their goods or estate ; (3.) their personal presence in the House, not to be withdrawn, either by the summons of inferior Courts, by the arrest of their bodies in civil causes,

‘ causes, or, what was of more importance, by commit-
 ‘ ment by orders from the Crown, for any supposed offences.’
 Beyond this, they seem never to have attempted to go; there is
 not a single instance of a Member’s claiming the Privilege of
 Parliament, to withdraw himself from the criminal law of the
 land; offences against the public peace they always thought
 themselves amenable for to the laws of their country; they
 were contented with being substantially secured from any
 violence from the Crown, or its Ministers; but readily sub-
 mitted themselves to the judicature of the King’s Bench, the
 legal Court of criminal jurisdiction; well knowing that ‘ Pri-
 ‘ vilege, which is allowed in case of public service for the
 ‘ Commonwealth, must not be used for the danger of the
 ‘ Commonwealth*’; or, as it is expressed in Mr. Glynn’s
 Report of the 6th of January, 1641 †, ‘ They were far from
 ‘ any endeavour to protect any of their Members, who should
 ‘ be, in due manner, prosecuted according to the Laws of the

* On the 17th of August, 1641, Mr. Pym reports from the Committee appointed to prepare heads for a conference with the Lords—‘ To let the Lords un-
 ‘ derstand that the conviction of divers
 ‘ recusants hath been hindered under pre-
 ‘ tence of Privilege of Parliament from
 ‘ their Lordships; and to declare unto their
 ‘ Lordships, that the opinion of this House
 ‘ is, That no Privilege of Parliament ought
 ‘ to be allowed in this case, for these rea-
 ‘ sons; (1.) Privilege of Parliament is not
 ‘ to be allowed in case of peace, if the
 ‘ peace be required. (2.) It is not to be
 ‘ allowed *against any indictment* for any
 ‘ thing done out of Parliament. (3.) It
 ‘ is not to be allowed in case of public
 ‘ service for the Commonwealth, for that

‘ it must not be used for the danger of the
 ‘ Commonwealth.’—In the report of this
 conference in the Lords Journals of the 18th
 of August, 1641, these reasons are some-
 what differently expressed. (1.) ‘ That
 ‘ no Privilege is allowable in case of the
 ‘ peace betwixt private men, much more
 ‘ in case of the peace of the Kingdom.
 ‘ (2.) That Privilege cannot be pleaded
 ‘ against an indictment for any thing done
 ‘ out of Parliament, because all indict-
 ‘ ments are *contra pacem Domini Regis*.
 ‘ (3.) Privilege of Parliament is granted
 ‘ in regard of the service of the Common-
 ‘ wealth, and is not to be used to the dan-
 ‘ ger of the Commonwealth.’

† See the second Volume of Commons
 Journals, p. 374.

‘ Realm, and the Rights and Privileges of Parliament, for
‘ Treason, or any other Misdemeanour; being sensible, that it
‘ equally imported them, as well to see justice done against
‘ them that are criminous, as to defend the just Rights and
‘ Liberties of the Subjects, and Parliament of England.’

It may be proper to make some pause at this period of the dissolution of the Parliament of 1628, because the conduct of Charles I. during the next twelve years, opens a very different scene. Finding that it was impossible to prevail on any House of Commons (of which he had tried three in three years) to comply with his exorbitant ideas of Regal Prerogative, or to give countenance to the arbitrary measures of his Ministers, he resolved to get rid of all restraint, and accordingly introduced such a system of tyranny into every part of the Government, that the Constitution was entirely destroyed, and lost in the power of the Crown.—Notwithstanding that he had so lately given the most solemn assent to the Petition of Right, he now as publicly violated it in every instance: (1.) He, by his circular letters to the Lords Lieutenants of Counties, exacted loans and benevolences without pretence of law; and Gentlemen of fortune and rank in the country were imprisoned for refusing to contribute: Tonnage and poundage were taken without the consent of Parliament, and such as would not submit to pay, had their goods seized, their persons imprisoned, and heavy fines imposed upon them. (2.) The rigorous powers of the Star-Chamber were executed with unlimited severity, and the most trifling offences were punished without mercy. (3.) Soldiers were billeted on the houses of private persons; (4.) and Martial Law executed, attended with the most provoking outrages committed by the soldiers:

soldiers : Add to these, the grievous imposition of ship money ; the cruelties exercised by the High Commission Court ; the rigorous execution of the forest laws, and the severe administration of ecclesiastical affairs ; together with the tyrannical oppressions in the government of Scotland, and of Ireland, under that able arch-traytor the Earl of Strafford ; and we shall have such a regular and comprehensive plan of arbitrary government, as was not to be exceeded in the most despotic states of Europe *.—But what rendered all this most odious and terrible was, that this government was so administered under the pretence of law ; and the Courts of Justice were filled with wretches, ready to declare the will of the Prince to be the law of the land.—Hitherto the people might have submitted ; but, as Lord Clarendon observes †, “ when
 “ they saw in a Court of Law (that Law which gave them a
 “ title to and possession of all they had) reasons of state urged
 “ as elements of law ; Judges as sharp sighted as Secretaries
 “ of State, and in the mysteries of State ; judgment of law
 “ grounded on matter of fact, of which there was neither
 “ enquiry nor proof, the burthen became intolerable.”

The Compilers of the Parliamentary History have, with their usual attachment to Charles I. endeavoured to represent these twelve years of intermission from Parliament, as the most halcyon days this nation ever saw.” “ During this period,”

* For proof of these particulars, consult Lord Clarendon, Whitelocke, and other contemporary Writers.

† Lord Clarendon's History of the Rebellion, Vol. I. p. 54.—To which he adds, in p. 57, ‘ These errors (for errors they were in view, and errors they are proved

‘ by the success) are not to be imputed to
 ‘ the Court, but to the spirit and over activity of the Lawyers ; who should more
 ‘ carefully have preserved their profession,
 ‘ and its professors, from being profaned
 ‘ by those services which have rendered
 ‘ both so obnoxious to reproach.’

say they, “ this kingdom, and all the King’s dominions, enjoyed the greatest calm, and the fullest measure of peace and plenty, that any people, in any age, for so long a time together, were ever blessed with, to the wonder and envy of all other parts of Christendom : Indeed some little disturbances happened in Scotland, in the year 1637, by the introduction of the English liturgy into that kingdom : The doctrine of J. Knox had gained so fast a footing there, that all Archbishop Laud’s injunctions and admonitions could not remove it *.”

Fortunately for this country, that bigotted Minister thought proper to support his injunctions and admonitions, by the more prevailing argument of force † ; and for that purpose, in the year 1639, the King marched with an army to the borders, and encamped within two miles of Berwick. The terrors of this force had their effect, and the Scotch promised to be better subjects for the future ; but, though this army was disbanded, there being reason to fear an immediate renewal of these insurrections to oppose the tyrannical measures in religion which Laud was determined to introduce into Scotland, it was thought necessary to raise another army ; and the Exchequer being already exhausted, no other means

* Eighth Vol. p. 393.

† See the several Proceedings in Scotland upon this subject, in the year 1638, with a copy of the covenant, which was framed and signed at that time, Vol. II. Rushworth’s Coll^o, p. 730. See particularly the King’s letter of the 11th of June to the Marquis of Hamilton, p. 752, in which are these very remarkable expressions : “ When I consider, that now not

“ only my crown but my reputation for
“ ever lies at stake, I must rather suffer
“ the first, which time will help, than
“ this last, which is irreparable.—This I
“ have written to no other end than to
“ shew you, *I will rather die than yield to*
“ *those impertinent and damnable demands*
“ *(as you rightly call them) for it is all one*
“ *as to yield to be no King in a very short*
“ *time.*”

could

could be suggested to support this army, but the assistance of Parliament.

The greatest admirers of Charles I. and the most warm defenders of his conduct, admit this difficulty to have been the sole cause of calling the Parliament of April, 1640. His Ministers were not suddenly seized with any violent attachment for these national Councils; they expressed no remorse for those oppressive measures, which, for twelve years together, their enemies charge them to have advised; they thought (with the Compilers of the Parliamentary History) that the peace and plenty, the ease and security, with which the nation had been so long blessed, were owing to this very intermission: Nothing therefore could have prevailed with them to have called another Parliament, but the distress from want of money, which the King's peculiar situation at that time brought on, and which was not to be repaired by any of those fruitful and ingenious resources of tonnage and poundage, knighthood, monopolies, ship-money, and military impositions, which, though sufficient for the peaceful expence of masks and revelling, were not adequate to the charge of raising and paying a considerable army.

If any further arguments were necessary to prove this proposition, the King's frequent speeches and messages upon this subject, during this short Parliament, are fully sufficient; besides the speech on the 13th of April, 1640, the day of opening the Parliament*, the Commons were again pressed

* " The charge of such an army hath
 " been thoroughly advised, and must
 " needs amount to a very great sum, such

" as cannot be imagined to be found in
 " his Majesty's coffers; which, how empty
 " soever, have neither yet been exhausted

pressed by the Lord Keeper on the 21st, at Whitehall, in the King's presence, to enter speedily and effectually into this matter of supply; 'this done,' says Lord Keeper Finch, 'his Majesty will give you scope and liberty to present your just grievances to him.' On the 24th of April, the King came himself to the House of Lords, and, without his robes, made a speech to the Lords only, in which he urged their Lordships on this head; he complained, 'that the Commons, instead of preferring his occasions in the first place, have held consultation of innovation of religion, property of goods, and Privileges of Parliament, and so have put the cart before the horse:—If it were a time to dispute, I should not much stand upon it; but my necessities are so urgent, that there can be no delay*.' The Lords immediately take this speech into consideration, and, in obedience to his Majesty's recommendation, resolve, (1.) 'That the supply shall have precedency, and be resolved upon before any other matter whatsoever.' And, (2.) 'That there shall be a conference desired with the House of Commons, to dispose them thereunto.'

At this conference, which was held on the 25th of April, the Lord Keeper, after recapitulating what he had said before on the 13th and 21st, assured the Commons, 'That his Majesty's necessary affairs will admit of no delay, but require a present and speedy supply; that therefore the Lords had voted, that his Majesty's supply should have precedency, and that they desired the Commons would go on with that first, as that which, in the opinion of the Lords, is most

" by unnecessary triumphs, or sumptuous buildings, or other magnificence: *Wherefore* his Majesty hath now called this Parliament."—Lord Keeper's

speech, eighth Volume of Parliamentary History, p. 403.

* See the Lords Journals, Vol. IV. p. 66.

' necessary;

‘ necessary; and that this being done, their Lordships will
 ‘ be ready to join in any thing to carry on this great busi-
 ‘ ness.’

Every measure taken by this unfortunate King *, throughout these two last Parliaments of 1640, seems to have been the effect of infatuation: At a time when he was courting the House of Commons, and when it was his most essential interest that they should be retained in good-humour, what but the most violent folly could have advised this most flagrant and outrageous breach of their Privileges? If they had before

* It appears from several circumstances in the History of Charles the First, that he was a man not without parts or understanding; but that he was unaccountably led away by others to commit several acts of violence and injustice, which his own disposition would not have prompted him to, and which were the means of bringing on the civil war. The Queen was the principal person, to whose counsels he listened; and it appears from a letter of Mr. Elliot's to Lord Digby, of the 27th of May, 1742, before the King had set up his standard at Nottingham (which was on the 25th of August following, according to Clarendon, Vol. I. p. 557.—but Rushworth, Vol. IV. p. 783, says it was on the 22d of August) that, even then, perhaps the disputes between him and the Parliament might have been accommodated; and that the King himself seemed willing to come to some terms, but that he was prevented by the rashness and obstinacy of the Queen. The words are these, in a letter dated from York:—“ For our affairs, they are now in so good a condition, that if we are not undone by bearkening to an accommodation, there is

“ nothing else can hurt us, which I fear the
 “ King is too much inclined to; but I hope
 “ what he shall receive from the Queen will
 “ make him so resolved, that nothing but a
 “ satisfaction, equal to the injuries he
 “ hath received, will make him quit the
 “ advantage he now hath.” Rushworth's
 Coll. Vol. IV. p. 719.—So, during the
 treaty at Oxford in 1643, Whitelocke (who
 was one of the Commissioners from the
 Parliament) says, “ In this treaty the
 “ King manifested his great parts and
 “ abilities, strength of reason, and quick-
 “ ness of apprehension, with much pa-
 “ tience in hearing what was objected
 “ against him; wherein he allowed all
 “ freedom, and would himself sum up
 “ the arguments, and give a most clear
 “ judgment upon them.—His unhappi-
 “ ness was, that he had a better opinion
 “ of others judgments than of his own;
 “ and of this the Parliament Commis-
 “ sioners had experience to their great
 “ trouble.” Whitelocke then mentions a
 very remarkable instance of the King's
 weakness in this particular.—Memoirs,
 p. 65.

been ever so well disposed to have taken into consideration the supply, preferably to every other subject, this step taken by the Lords, in consequence of the King's earnestness, must have prevented them; the warmest friends to the King could not now, consistently with their regard for the Privileges of the House of Commons, propose proceeding in the supply in the first place.—The interfering of the Lords had precluded this course of proceeding, and it became the immediate duty of the Commons, to resolve, 'That in this conference the Privileges of the House are violated; and that their Lordships voting, propounding, and declaring touching matters of supply, before it moved from this House, is a breach of the Privilege of this House.' A Committee is accordingly appointed to prepare in writing, an address to the Lords for righting the Privileges of the Commons; and this address is sent on the 28th to the Lords by Mr. Pymm*. Upon which, after long and serious debate, the Lords resolve, 'That this vote was no breach of the Privileges of the House of Commons.' And on the 1st of May, the Lords at a conference give their reasons for this vote, by the mouth of the Lord Keeper; on the 2d of May, before the Commons had time to consider these reasons, the King, growing out of all patience, sent another message by Sir Harry Vane, Treasurer of the Household, 'desiring a present answer concerning his supply.' The debate upon this message lasted till six o'clock on Saturday night, and was then adjourned till Monday morning at eight o'clock: On Monday, Mr. Treasurer brings another message, in which his Majesty proposes the quantum of the supply, 'and expects a present and positive answer, upon which he may rely.' This day was also taken up in preparing an an-

* See Lords Journals, Vol. IV. p. 72. et subf.

swer

swer to the King's messages, and the debate adjourned till the next morning at eight o'clock: But before they could meet on the 5th of May, the King sent for them to the House of Lords, and dissolved the Parliament*.

I hope this summary account of the proceedings of the short Parliament of 1640, will not be thought inconsistent with my general plan of treating on the Privileges of the House of Commons, since the whole dispute between the King and the Commons was, as to the right of precedency of business: Whether they should first have redress for the several violations of their Privileges, in the former Parliaments; or should, by virtue of his Majesty's pressing directions, be obliged to proceed first in the matter of supply:—a question essentially material to their existence. For if the King's proposition had been adopted, it is not difficult to foretell what would have been the consequence: 'this done, his Majesty would have given them liberty to present their just grievances to him.' This difference also between the two Houses would give me an opportunity of going more largely into the consideration of that most ancient, most important, and essential Privilege of the House of Commons, respecting 'their sole right of beginning the grants of aids, and supplies, and of directing and limiting the ends, purposes, considerations, and qualifications of such grants, without the Lords having the power to alter or to change them †.'—But the discussion of this question, and a collection of the precedents, upon

* See Parliamentary History, Vol. VIII. p. 436 to 468:—Lord Clarendon supposes, that the part which Sir H. Vane took in this affair was with a malicious intention, and to bring all into confusion.—History of Rebellion, Vol. I. p. 110.
 † See Commons Journals, 3d of July, 1678.

which

which this right has been supported, is too great to be inserted in this Work, and deserves to be treated of by itself*.

The proceedings of the Court on the dissolution of the Parliament of 1628, against those Members that had then taken an active part; the imprisonment of those respectable men, Mr. Holles, Sir M. Hobart, Sir J. Eliot, Sir P. Hayman, and others†, together with the prosecutions and judgments obtained against them in the Star-Chamber, and Court of King's Bench, for their speeches and behaviour in Parliament, brought on at the commencement of the Session, in April, 1640, an enquiry into these breaches of Privilege. It was obvious, that if such proceedings were passed over without notice, and if it should, by their silence, be admitted, that Members of the House of Commons are punishable, after a dissolution, for actions or speeches in Parliament; the freedom of speech, and with that, the freedom of acting and voting, would be at an end. It had been in vain to plead Strode's Law, the fourth of Henry VIII. as a general law in favour of this liberty, or to shew that offences, supposed to be committed in Parliament, are not cognizable in any other Court: The Judges of that day had been too well schooled to admit the force of such trifling objections; they determined Strode's Law to be a private Act of Parliament‡; and as to the Privilege of Parliament of not being questioned elsewhere, they said, 'We are judges of their lives and lands, therefore
' of their liberties; no outrageous speeches were ever used

* See in Vol. III. of this Work, under the title, *Supply*.

† See the Parliamentary History, Vol. VIII. p. 354.

‡ See Whitelocke's Memoirs, p. 12, 13.

' against

‘ against a great Minister of State in Parliament, that have
‘ not been punished ;’ and agreeable to these doctrines, Mr.
Justice Jones, on the last day of the term, pronounced the
judgment of the Court, “ That all the defendants should be
“ imprisoned, during the King’s pleasure, not to be delivered
“ till they had given security for their good behaviour, and
“ made submission and acknowledgment of their offence ; Sir
“ J. Eliot to pay a fine of two thousand pounds, as the greatest
“ offender and the ringleader ; Mr. Holles, of one thousand
“ marks ; and Mr. Valentine, of five hundred pounds *.”

Notwithstanding the temper and moderation, with which
this Parliament of April, 1640, is acknowledged to have met,
these breaches of Privilege, so destructive to the very existence
of a free Council, became an immediate object of their con-
sideration ; petitions were presented from all parts, complain-
ing of the several grievances under which the nation had long
laboured, and in these debates even the most courtier-like
Members, Mr. Waller, and others, could not help expressing
their apprehensions of the consequences of such unjustifiable
proceedings †.

This matter did not rest here ; in the next Parliament, on
the 6th of July, 1641, the House of Commons again took
up this breach of their Privileges in 1628, and came to reso-
lutions :

(1.) That the Warrants of the Lords, and others of the
Privy Council, compelling Mr. Holles and others to appear
before them during that Parliament ; that the committing of

* See the Parliamentary History, Vol. VIII. p. 354 to 389.

† See Rushworth, Vol. III p. 1149.

Mr. Holles and others, by the Lords and others of the Privy Council, in 4th Car. during that Parliament; that the searching and sealing of the chambers, studies, and papers of Mr. Holles, Mr. Selden, and Sir J. Eliot, being Members of that Parliament, and issuing out Warrants for that purpose; and that the exhibiting an information in the Court of Star-Chamber, against Mr. Holles and others, for matters done by them in Parliament, being Members of Parliament, are breaches of Privilege. — (2.) That Sir Robert Heath, Sir H. Davenport, and others who subscribed the said informations, are guilty of a breach of Privilege. — And on the 8th of July, the Commons came to several other resolutions touching this matter, and committed Mr. Laurence Whitaker, who had entered the chamber of Sir J. Eliot, and been concerned in searching his trunks and papers, to the Tower.

But, as if the heinousness of this crime could never be expiated, on the 15th of October, 1667, at the distance of almost forty years, a Committee is appointed to consider of this Case, of the information brought in the King's Bench, and how the Law and Report is in that particular. On the 12th of November, Mr. Vaughan reports from this Committee, and on the 23d of November, the House resolve, 'That the judgment given in the fifth Car. I. against Sir J. Eliot, Denzil Holles, and Benjamin Valentine, Esquires, in the King's Bench, was an illegal judgment, and against the freedom of Privilege of Parliament.' To this vote, the Commons at a conference desire the concurrence of the Lords, and on the 11th of December*, the Lords report this conference, and agree to the resolution.

* Vide Lords Journals.—See also this Report in the Appendix to this Vol. N^o 1.

In Mr. Pymm's speech * is a summary of all the oppressions of which the public had had reason to complain, during the last twelve years; and in the Journal of the 24th of April, 1640, these are all recapitulated in a report from a Committee, appointed to prepare the inducements for the conference with the Lords †. But this conference was never held; the King was unfortunately advised to dissolve this Parliament on the 5th of May, much to the dissatisfaction of the more moderate part of the nation; and so much to his Majesty's own, that upon recollection, Lord Clarendon says, he wished to recall them, and consulted whether he could not do it by proclamation ‡.—Notwithstanding all that had passed, the very next day after this Parliament was dissolved, fresh violences of the same nature were committed; Sir Henry Bellasyse, and Sir John Hotham were called before the Council, and upon their refusing to answer to questions about matters done in Parliament, were committed to the Fleet; and Mr. Crewe, who was chairman to the Committee on religion, was, for refusing to deliver up

* Parliamentary History, Vol. VIII. p. 425.

† Lord Clarendon's encomiums on the temper and moderation of this Parliament, render the Report from this Committee (which was agreed to by the House) sufficient evidence of the truth of the charges against the King and his Ministers, for their tyrannical behaviour during this period.—In the first volume of the History of the Rebellion, p. 110,—he says, "It could never be hoped that more sober and dispassionate men would ever meet together in that place, or fewer who brought ill purposes with them."—In p. 106, he mentions a circumstance only "that the temper and so-

briety of the House may be taken notice of, and their dissolution, which shortly after fell out, the more lamented."—This Report therefore, which is to be found at length in the second volume of the Commons Journals, p. 11, and which I have now published in the Appendix to this Vol. N^o 2, contains a complete answer to the Compilers of the Parliamentary History, and to those other Historians, who have so artfully laboured to prove, that the Civil War was more owing to the violent spirit, and illegal pretensions of the Commons, than to the arbitrary measures of the Court.

‡ Lord Clarendon's History, Vol. I. p. 111.

the petitions and complaints made upon those matters, committed to the Tower*. When therefore the necessities of government, administered by the advice of the bold and daring Strafford, and the bigotted Archbishop Laud, had so involved the King, that he was again compelled within a few months, contrary to his own inclinations, to call another Parliament; it is no wonder that they met, determined to have ample satisfaction for these enormous breaches of the constitution. They had had too long experience of the King's own disposition, and of the wisdom of his Counsellors, any longer to trust the reins of government in such hands; they knew they were called together, not from any affection the King had taken to Parliaments, but "because his Ministers were puzzled how to find supplies †."—They were therefore naturally led, in the first place, to secure their own existence, and no longer to depend on the capricious temper of the King; they accordingly obtained the Act for preventing their dissolution ‡. This security, though it altered the Constitution, gave a new spirit to the leading Members of the House of Commons:—all fears of a dissolution being removed, they were enabled to insist upon every measure, which they thought necessary for the security of the State: They had the satisfaction and the merit of bringing down just punishments on Laud and Strafford; they abolished the Courts of Star-Chamber and High Commission: they reduced the influence of the Crown, by taking away the votes of the Bishops in the House of Lords.—If both sides had stopt here, all might have been well; but so rooted was the jealousy

* See Parliamentary History, Vol. VIII. p. 489.

† See the Sidney Papers, Vol. II. p. 623.

‡ I do not mean to approve of this mea-

sure—it was certainly a violent breach in the Constitution of this Government; and yet, if this Act had not been obtained, perhaps it would have been impossible to oppose the King's attempts with effect.

of the Commons against the King, and so averse was the King, in his own nature, from submitting to any restraints on the Regal Power by his subjects, that no concessions on his part, no intentions for the public good on theirs, however upright, could induce confidence and harmony between them: Every day produced bickerings and heats, which were probably fomented by designing persons on both sides, till at length the King was persuaded to take the fatal step of going in person to the House of Commons, and endeavouring to seize the Members, who, he thought, had offended him *. From this day, the 4th of January, 1641, there could be no hopes of a reconciliation; the King soon withdrew into the North, and the Civil War began. This violent and fatal step, as it was subversive of every idea of the Privileges of the House of Commons, was the signal to all, who wished ill to the King's power, to go every length, however little to be justified by the ancient laws of the Constitution, or the rules of proceeding in Parliament. On the King's retiring from London †, the Popular Leaders in the House of Commons proceeded to take such measures, as appeared to them to be necessary to protect the State from the revival of arbitrary power; measures, which however they might then be excused from the very particular circumstances of the times, or justified by the confusion into which the

* See the very curious account of the whole of this extraordinary transaction, as related by Rushworth, who was at that time Clerk-Assistant, and present in the House of Commons,—in the Appendix to this Vol. N° 3.

† On Monday, the 10th of January, 1641-2, about three o'clock in the afternoon, the King, with the Queen, and their royal offspring, left Whitehall and the whole

Court: His Majesty being in his coach, called the Captain of the Guard of Train-Bands, that attended at Whitehall, unto him, and said, "I thank you for your attendance, and for what you have done, and do now dismiss you." So his Majesty went to Hampton-Court, and from thence afterwards by degrees to York.—Rushworth, Vol. IV. p. 484.

Government was thrown by the King's withdrawing himself, cannot be considered as precedents to be followed in times of peace and quietness.—And therefore, if I shall ever have leisure or inclination to continue this Work *, I shall think myself obliged to pass over every thing that occurred after this unhappy day, and shall collect only such precedents as are to be met with in the two Parliaments of 1640, till the 4th of January, 1641, and then proceed directly to the Restoration.

* The Act which passed in the 10th year of Geo. III. ch. 50, intituled, "*An Act for the further preventing Delays of Justice by reason of Privilege of Parliament,*" having provided, "That no action, suit, or any other process, or proceeding thereupon, shall at any time be impeached, stayed, or delayed, by or

"under colour or pretence of any Privilege of Parliament;" much of the matter, which I had collected relating to this title of *Privilege*, is thereby rendered useless. I have, therefore, instead of continuing this work, applied my studies to the other titles, which compose the two following volumes.

A P P E N D I X

TO THE

F I R S T V O L U M E.

N^o I.

Extract from the Lords Journal, 11th December, 1667.

NEXT, the Lord Chamberlain and the Lord Ashley reported the effect of the conference with the House of Commons yesterday, which was managed by Mr. Vaughan, who said,

“ He was commanded by the House of Commons, to acquaint their Lordships with some resolves of their House, concerning the Freedom of Speech in Parliament, and to desire their Lordships concurrence therein.

“ In order to which, he was to acquaint their Lordships with the reasons that induced the House of Commons to pass those resolves.

“ He said, the House of Commons was accidentally informed of certain books published under the name of Sir George

“ George Crook’s Reports; in one of which there was a
 “ Case published, which did very much concern this great Pri-
 “ vilege of Parliament; and which passing from hand to hand
 “ amongst the men of the long robe, might come in time to
 “ be a received opinion, as good law.

“ The House of Commons, considering the consequence,
 “ did take care that this Case might be enquired into, and
 “ caused the book to be produced and read in their House;
 “ and he thought, that the next and clearest way to inform
 “ their Lordships is, to read the Case itself, which is *Quinto*
 “ *Caroli Primi, Michaelmas terme*; which Case was read as
 “ followeth:

“ The King versus Sir John Eliot, Denzell Holles,
 “ and Benjamine Valentine.

“ An information was exhibited against them, by the At-
 “ torney General, reciting, that a Parliament was sum-
 “ moned to be held at Westminster, *decimo septimo*
 “ *Martii, tertio Caroli Regis ibidem inchoat.* and that
 “ Sir John Eliot was duly elected and returned Knight
 “ for the County of Cornwall, and the other two Bur-
 “ gesses of Parliament for other places; and Sir John
 “ Finch chosen Speaker: That Sir John Eliot, *machinans*
 “ *et intendens omnibus viis et modis seminare et exci-*
 “ *tare, discord, evil-will, murmurings, and seditions, as*
 “ *well versus Regem, magnates, prelatos, proceres, et*
 “ *justiciarios, et reliquos subditos Regis, et totaliter*
 “ *deprivare et avertere regimen et gubernationem regni*
 “ *Angliæ, tam in Domino Rege, quam in consiliariis*

“ et ministris suis cujuscumque generis, et introducere
“ tumultum et confusionem in all estates and parts, et
“ ad intentionem, that all the King's subjects should with-
“ draw their affections from the King, the twenty-third
“ of February, anno quarto Caroli, in the Parliament
“ and hearing of the Commons, falsò, malitiosè, et sedi-
“ tiosè, used these words, ‘ The King's Privy Council,
‘ his Judges, and his Counsell learned, have conspired
‘ together, to trample under their feet the liberties of the
‘ subjects of this Realm, and the liberties of this House :’
“ And afterwards, upon the second of March, anno
“ quarto aforesaid, the King appointed the Parliament to
“ be adjourned until the 10th of March next following,
“ and so signified his pleasure to the House of Commons ;
“ and that the three defendants, the said second day of
“ March, quarto Caroli, malitiosè agreed, and amongst
“ themselves conspired, to disturb and distract the Com-
“ mons, that they should not adjourn themselves, accord-
“ ing to the King's pleasure before signified ; and that the
“ said Sir John Eliot, according to the agreement and
“ conspiracy aforesaid, had maliciously, in propositum et
“ intentionem prædict. in the House of Commons afore-
“ said, spoken these false, malicious, pernicious, and sedi-
“ tious words precedent, &c. ; and that the said Denzell
“ Holles, according to the agreement and conspiracy afore-
“ said, between him and the other defendants, then and
“ there, falsò, malitiosè, et seditiosè, uttered hæc falsa,
“ malitiosa, et scandalosa verba præcedentia, &c. ; and
“ that the said Denzell Holles and Benjamine Valentine,
“ secundum agreementum et conspiracy prædict. &c. ;
“ ad intentionem et propositum prædict. uttered the said
“ words, upon the said second day of March, after the
“ signifying

“ signifying the King’s pleasure to adjourn; and the said
“ Sir John Finch, the Speaker, endeavoured to get out of
“ the chair, according to the King’s command, they vi et
“ armis, manu forti, et illicitò, assaulted, evil-entreated, and
“ forcibly detained him in the chair; and afterwards, be-
“ ing out of the chair, they assaulted him in the House, and
“ evil-entreated him, et violenter, manu forti, et illicitò,
“ drew him to the chair, and thrust him into it; where-
“ upon there was great tumult and commotion in the
“ House, to the great terror of the Commons there as-
“ sembled, against their allegiance, in maximum con-
“ temptum, and to the disherison of the King, his Crown,
“ and dignity; for which, &c.”

“ To this information, the defendants appearing, pleaded
“ to the jurisdiction of the Court, That the Court ought
“ not to have cognizance thereof, because it is for of-
“ fences done in Parliament, and ought to be there exa-
“ mined and punished, and not elsewhere: It was there-
“ upon demurred, and after argument adjudged, That
“ they ought to answer; for the charge is for conspiracy,
“ seditious acts, and practices to stop the adjournment of
“ the Parliament, which may be examined out of Parlia-
“ ment, being seditious and unlawful acts; and this Court
“ may take cognizance, and punish them.

“ Afterwards divers rules being given against them, videlicet,
“ Sir John Eliot, That he should be committed to the
“ Tower, and should pay two thousand pounds fine, and
“ upon his enlargement should find sureties for his good
“ behaviour; and against Holles, that he should pay a
“ thousand marks, and should be imprisoned, and find
“ sureties,

“ sureties, &c. ; and against Valentine, that he should pay
“ five hundred pounds fine, be imprisoned, and find sureties.

“ Then Mr. Vaughan laid much emphasis upon the words
 “ machinans et intendens, &c. and then went on ; that the
 “ House of Commons had not only read the Case as it was in
 “ the book, but did look in the record, where, in the informa-
 “ tion itself, they found some considerable differences from the
 “ print ; as, that the crime alledged, consisting partly of words
 “ spoken in the House, partly of criminal actions pretended to
 “ be committed. The gentlemen accused pleaded severally,
 “ namely, specially to the words, and a several plea apart to
 “ the criminal actions : But the court dealt so craftily, that
 “ they over-ruled the whole plea mingled together, and took
 “ it in general ; so that perhaps whatsoever was criminal in
 “ the actions might serve for a justification of their rule ; and
 “ might make it seem in time to come a precedent, and a
 “ ruled case, against the liberty of speech in Parliament, which
 “ they durst not singly and bare-faced have done.

“ The House of Commons did take care to enquire what
“ antient laws did fortify this the greatest Privilege of both
“ Houses; and they found, in the fourth year of Henry
“ VIII. an Act concerning one Richard Strowd, who was a
“ Member of Parliament, and was fined at the Stannary Courts,
“ in the West, for condescending and agreeing, with other
“ Members of the House, to pass certain Acts to the prejudice
“ of the Stannaries. This Act was made occasionally for him,
“ but did reach to every Member of Parliament that then was,
“ or shall be; the very words being, videlicet,

“ And over that, be it enacted, by the same authority, that
 “ all fuits, accusgements, condemnations, executions, fines,
 F f “ amerciements,

“ amerciaments, punishment, corrections, grievances,
 “ charges, and impositions, put or had, or hereafter to be
 “ put or had, unto or upon the said Richard, and to every
 “ other of the person or persons afore specified, that now
 “ be of this present Parliament, or that of any Parlia-
 “ ment hereafter shall be, for any Bill, speaking, reason-
 “ ing, or declaring, of any matter or matters concerning
 “ the Parliament, to be communed and treated of, be
 “ utterly void and of none effect: And over that, be it
 “ enacted by the said authority, that if the said Richard
 “ Strowd, or any of all the said other person or persons,
 “ hereafter be vexed, troubled, or otherwise charged, for
 “ any causes as is afore said; that then he or they, and every
 “ of them, so vexed or troubled of or for the same, to
 “ have action upon the case against every such person or
 “ persons so vexing or troubling any, contrary to this or-
 “ dinance and provision, in the which action the party
 “ grieved shall recover treble damages and costs; and
 “ that no protection,essoign, nor wager of law, in the said
 “ action, in any wise, be admitted nor received.

“ He said, ’Tis very possible the plea of those worthy persons,
 “ Denzell Holles, Sir John Eliot, and the rest, was not suffi-
 “ cient to the jurisdiction of the Court, if you take in their
 “ criminal actions altogether; but as to the words spoken
 “ in Parliament, the Court could have no jurisdiction, whilst
 “ this Act of the fourth of Henry VIII. is in force, which ex-
 “ tends to all Members that then were, or ever should be,
 “ as well as Strowd; and was a public general law, though
 “ made upon a private and particular occasion.

“ He recommended to their Lordships the consideration of
 “ the time when these words, in the Case of Sir George Crook’s
 “ Reports,

“ Reports, were spoken, which was the 2d of March, 4th Ca-
“ roli Primi, being in that Parliament which began in the
“ precedent March, 3rd Caroli, at which time the judgment
“ given in the King’s Bench about Habeas Corpus, was newly
“ reversed, which concerned the freedom of our persons, the
“ liberty of speech, invaded in this Case; and not long after
“ the same judges, with some others joined with them, in
“ the case of ship-money, invaded the propriety of our goods
“ and estates: So that their Lordships find every part of
“ these words, for which those worthy persons were accused,
“ justified.

“ If any man should speak against any of the great officers,
“ as the Chancellor, or Treasurer, or any of the rest recited
“ in those acts, as by accusing them of corruption, ill council,
“ or the like, he might possibly justify himself by proving of
“ it: But in this case it was impossible to do it, because these
“ judgments had preceded and concluded him; for he could
“ make none, but by alledging their own judgments, which
“ they themselves had resolved, and would not therefore allow
“ to be crimes, which they had made for laws.

“ He did inform their Lordships, that the Bill in the Rolls
“ hath another title than that he did mention; this being that
“ the Clerks knew it by, rather than the proper title.

“ The words in the Case are charged, *eâ intentione*; which
“ ought not to be; for it is clear and undoubted law, that
“ whatever is in itself lawful, cannot have an unlawful intent
“ annexed to it. Things unlawful may be made a higher
“ crime by the illness of the intent. For instance, taking
“ away my horse, is a trespass only; but intending to steal
“ him,

“ him, makes it felony : Borrowing my horse, though intend-
“ ing to steal him, is not felony, because borrowing is lawful,
“ and there were no use of freedom of speech otherwise ; for a
“ depraved intention may be annexed to any the most justifi-
“ able action : If a man eat no flesh, he may be accused for
“ the depraved intention of bringing in the Pythagorean Reli-
“ gion, and subverting the Christian. If a man drink water,
“ he may be accused of the depraved intention of subverting
“ the King's Government, by destroying his revenue both of
“ Excise and Custom.

“ No man can make a doubt, but whatever is once enacted
“ is lawful ; but nothing can come into an Act of Parliament,
“ but it must be first affirmed or propounded by somebody ; so
“ that, if the Act can wrong nobody, no more can the first
“ propounding : The Members must be as free as the Houses.
“ An Act of Parliament cannot disturb the State ; therefore
“ the debate that tends to it cannot, for it must be propound-
“ ed and debated before it can be enacted.

“ In the reign of Henry VIII. when there were so many
“ persons taken by Act of Parliament out of the Lords House,
“ as the Abbots and Priors, and all the religious houses and
“ lands taken away ; it had been a strange information against
“ any Member of the Parliament then, for propounding so
“ great an alteration in Church and State.

“ Besides, Religion itself began then to be altered, and was
“ perfected in the beginning of Edward VI.'s reign, and re-
“ turned again to Popery in the beginning of Queen Marie's,
“ and the Protestant Religion restored again in the beginning
“ of Queen Elizabeth's.

“ Should

“ Should a Member of Parliament, in any of these times,
“ have been justly informed against in the King’s Bench, for
“ propounding or debating any of these alterations? So
“ that their Lordships perceive the reasons and inducements
“ the House of Commons had to pass these votes now pre-
“ sented to their Lordships.”

After this, the votes were read, videlicet,

“ Resolved, &c. That the Act of Parliament quarto Hen-
“ rici VIII. commonly intituled, ‘ An Act concerning Ri-
“ chard Strowd,’ is a general law, extending to indemnify all
“ and every the Members of both Houses of Parliament, in all
“ Parliaments, for and touching any Bills, speaking, reason-
“ ing, or declaring, of any matter or matters in and concern-
“ ing the Parliament, to be communed and treated of; and
“ is a declaratory law of the ancient and necessary Rights and
“ Privileges of Parliament.

“ Resolved, &c. That the judgment given quinto Caroli
“ against Sir John Eliot, Denzell Holles, and Benjamin Va-
“ lentine, Esquires, in the King’s Bench, was an illegal judg-
“ ment, and against the Freedom and Privilege of Parliament.”

To both which votes the Lords agree with the House
of Commons.

A P P E N D I X, No. 2.

Extract from the Commons Journal, 24th April, 1640.

“ THESE heads following were by the Committee, accord-
 “ ing to yesterday’s order, brought in, as inducements
 “ and matter for the conference to be desired with the Lords :

“ Sir W. Erle reports from the Committee, appointed to
 “ prepare the inducements for the conference with the Lords,
 “ in hæc verba, viz.

I N D U C E M E N T S.

“ (1.) *Concerning Innovation in Matters of Religion.*

“ 1. The commission that was lately granted to the Con-
 “ vocation House;—the rather because of the Innovations
 “ brought in and practised, when there was no such com-
 “ mission.

“ 2. The complaints arising from the petitions brought in
 “ from the several counties, by the Members of the House,
 “ against Innovations in Religion.

“ 3. The molesting and depriving of godly and conformable
 “ ministers, for not yielding to matters enjoined without
 “ warrant of law.

“ 4. The publishing of Popish tenets, in licensed books,
 “ sermons, and disputations.

“ 5. Re-

“ 5. Restraining of conformable ministers from preaching
“ in their own charges.

“ (2.) *Concerning Propriety of Goods.*

- “ 1. Monopolies, and restraint of trade.
- “ 2. Ship-money.
- “ 3. Enlarging the bounds of forests, beyond what they
“ have been for some hundreds of years last past.
- “ 4. Military charges, viz. coat and conduct-money, wages,
“ arms taken from the owners; forcing the counties to buy
“ or provide, at their charges, horses and carts, by way of
“ tax.
- “ 5. The denial of justice in the Courts at Westminster, to
“ the subject's prejudice, in point of the propriety of his goods.
- “ 6. Frequent imprisonments and vexations for non-pay-
“ ment of unwarrantable taxes, and not submitting to un-
“ lawful monopolies.

“ (3.) *Liberties and Privileges of Parliament.*

- “ 1. Punishing men, out of Parliament, for things done in
“ Parliament.
- “ 2. That which is already voted in the House, concerning
“ Privilege of Parliament.
- “ 3. Sudden dissolving of Parliaments without redress of
“ grievances.—Laid by for the present, and not put to the
“ question.
- “ Lastly (as that which relates unto all, and is a great
“ cause of all the former grievances), the not holding of Par-
“ liaments

“ liaments every year, according to the laws and statutes of
“ this Realm.—Laid by for the present, and not put to the
“ question.

“ That business of pressing the Trained Bands out of the
“ counties, was only moved; and nothing more done in it at
“ this time.

“ A transcript of the commission lately granted to the Con-
“ vocation House, was read.

“ Motion was made, That this House might be informed,
“ by what means this transcript was had.

“ Whereupon Mr. Holborne, one of that Select Committee
“ that was appointed to view this commission, said, that, ac-
“ cording to this House's order, they repaired to the Lord **,
“ who told them, that if they had come to him before any
“ question had been made of this business,—but now desired
“ he might first acquaint His Majesty; which he did; and,
“ at our repair again unto him the same evening, he gave us
“ leave, not only to see it, but to have this transcript of it.

“ The first question was upon the commission that was
“ lately granted to the Convocation,—Whether this matter of
“ the commission, lately granted to the Convocation, shall be
“ one of the heads of the conference with the Lords, to the
“ end to prevent any innovations in matter of Religion.

“ Innovation in Matter of Religion.

“ 1. Resolved, upon the question, That, in this conference
“ with the Lords, for prevention of innovations in matter of
“ Religion,

“ Religion, there shall be use made of this commission lately
“ granted to the Convocation, the rather because of the com-
“ plaints of innovations practised before the grant of this
“ commission.

“ 2. Resolved, upon the question, That, in this conference
“ with the Lords, use shall be made of the complaints arising
“ from the petitions brought in by the several Members of
“ the House, from several counties, against innovations in
“ matter of religion.

“ 3. Resolved, upon the question, That, in this conference
“ with the Lords, use shall be made of the complaints that
“ have been made here, for the molesting and depriving of
“ godly and conformable ministers, for not yielding to matters
“ enjoined, complained of to be without warrant of law.

“ 4. Resolved, upon the question, That, in this conference
“ with the Lords, use shall be made of the complaints that
“ have been made, for the publishing of Popish tenets, con-
“ trary to the doctrine of the Church of England, in licensed
“ books, sermons, and disputations.

“ 5. Resolved, upon the question, That, in this conference
“ with the Lords, use shall likewise be made of the complaints
“ that have been made, touching the restraint of conformable
“ ministers from preaching in their own charges.

Propriety of Goods.

“ 1. Resolved, upon the question, That, in this conference
“ with the Lords, use shall be made of the complaints that
“ have been here presented, touching monopolies, and restraint
“ of trade.

“ 2. Resolved, upon the question, That, in this conference
“ with the Lords, use shall be made of the complaints that
“ have been, touching ship-money.

G g

“ 3. Resolved,

“ 3. Resolved, upon the question, That, in this conference
 “ with the Lords, use shall be made of the complaints that
 “ have been had, of enlarging the bounds of forests, beyond
 “ what they have been for some hundreds of years last past.”

“ 4. Resolved, upon the question, That, in this conference
 “ with the Lords, use shall likewise be made of the complaints
 “ that have been had, concerning military charges, viz. coat
 “ and conduct money, wages, arms taken from the owners,
 “ forcing the countries to buy or provide, at their charges,
 “ horses and carts, by way of tax.”

“ 5. Resolved, upon the question, That, in this conference
 “ with the Lords, use shall be likewise made of the complaints
 “ that have been had, concerning denial of justice in the Courts
 “ at Westminster, to the subject's prejudice, in point of the
 “ propriety of his goods.”

“ 6. Resolved, upon the question, That, in this conference
 “ with the Lords, use shall be likewise made of the complaints
 “ that have been, for the frequent imprisonments and vexa-
 “ tions for non-payment of unwarrantable taxes, and not
 “ submitting to unlawful monopolies.”

Liberties and Privileges of Parliament.

“ 1. Resolved, upon the question, That, in this conference
 “ with the Lords, use shall be likewise made of the complaints
 “ that have been, touching the punishing of men out of Par-
 “ liament, for things done in Parliament.”

“ 2. Resolved, upon the question, That, in this conference
 “ with the Lords, use shall likewise be made of that which is
 “ already voted in this House, touching Privilege of Par-
 “ liament.”

“ The other propositions,—Of sudden dissolving of Parlia-
 “ ments,

“ ments, without redress of grievances,—and that, Of not
 “ holding Parliaments once a year,—and that, Of pressing the
 “ Trained Bands out of their proper Counties,—were for this
 “ present laid aside, and not put to the question.

“ Mr. Treasurer, Mr. Comptroller, Mr. Secretary Winde-
 “ bank, Mr. Holborne, Mr. Edw. Hyde, Mr. St. John, Dr.
 “ Jones, Dr. Eden, Sir Robt. Harley, Mr. Vaughan, Sir
 “ Ben. Rudyard, Sir M. Fleetwood, Mr. Pym, Mr. Hamp-
 “ den, Sir Tho. Paddington, Sir Fr. Seymour, Mr. Crewe, Sir
 “ H. Martin, Mr. Bridgman, Mr. Grimston, Mr. Kirton, Sir
 “ Jo. Strangeways, Sir Peter Hayman, Sir Walth. Erle, Mr.
 “ Lenthall, Sir Oliver Luke, Sir Wm. Masham, Sir Christ.
 “ Hatton, Sir Robt. Cooke, Lord Digby, Sir Jo. Hotham, Sir
 “ Hugh Cholmeley, Sir Jo. Culpepper, Mr. Maynard, Mr.
 “ Hatcher, Lord Ruthyn, Mr. Glynn.

“ This Committee is to use all expedition in preparing and
 “ giving directions for the managing of the business of this
 “ conference; and have power to send for records and witnesses;
 “ and are to report it to the House to-morrow morning, if
 “ possible; and are to meet this afternoon at two of the clock
 “ in the Court of Wards.

“ Mr. Vassal moved, that his particular grievance, of having
 “ his goods, viz. six hundred and odd pounds, detained from
 “ him, by colour, as he said, of orders from the Lords of the
 “ Privy Council, might be inserted, as one of the inducements
 “ for this conference: But it was said, it might serve for an
 “ instance in one of the particulars contained under the head
 “ of propriety of goods; and so it was passed by, and no fur-
 “ ther resolution taken in it.

A P P E N D I X, N^o 3.*Extracts from RUSHWORTH (Vol. IV. p. 474).*

“ **T**HE House of Peers sent a message to the Commons
 “ (who were then in debate of his Majesty’s answer
 “ concerning their desire of a guard) to acquaint them that
 “ some of their Members were accused in the Lords House of
 “ high treason by the King’s Attorney General.

“ At the same time information was also brought them, that
 “ several persons were sealing up the trunks, doors, and pa-
 “ pers, belonging to Mr. Pym and Mr. Holles, and afterwards
 “ of the other accused Members; whereupon it was ordered
 “ by the House of Commons, that the Serjeant attending this
 “ House shall have power to break open the said doors, and
 “ the seals upon the trunks, &c.; and the Speaker to sign a
 “ warrant to apprehend the said persons: and likewise they
 “ passed this following Order:

‘ *Die Lunæ, 3 January 1641.*

‘ It is this day ordered, upon the question, by the Commons
 ‘ House of Parliament, that if any persons whatsoever shall
 ‘ come to the lodgings of any Member of this House, and
 ‘ there do offer to seal the trunks, doors, or papers of any
 ‘ Member of this House, or to seize upon their persons, that
 ‘ then such Members shall require the aid of the Constable, to
 ‘ keep such persons in safe custody, till this House do give
 ‘ further

• further order. And this House doth further declare, that if
• any person whatsoever shall offer to arrest or detain the
• person of any Member of this House, without first acquaint-
• ing this House therewith, and receiving further order from
• this House, that it is lawful for such Member, or any person
• to assist him, and to stand upon his and their guard of de-
• fence, and to make resistance, according to the Protestation
• taken to defend the Privileges of Parliament.

• H. Elfyng, Cler. Parl. D. Com.'

“ And immediately the Commons sent up Mr. Walter Long,
“ to desire a conference with the Lords about breach of
“ Privileges: the heads of which conference were to this
“ purpose:

“ That the violating of the Privilege of Parliament, is the
“ overthrow of Parliament. That by the Protestation taken
“ by both Houses of Parliament, to defend the Privileges of
“ Parliament, both Houses are concerned in the breach of
“ either. That the trunks, chambers, and studies of divers
“ Members of this House, are this day sealed up. That the
“ Parliament, as the great Council of the kingdom, ought to
“ sit as a free Council, and no force ought to be set about them
“ without their consent. That notwithstanding there is a
“ guard in a warlike manner placed at Whitehall, to the
“ breach of the Privilege of Parliament. Also to desire the
“ Lords, that such a guard may be set about the Parliament
“ as shall be approved of by both Houses, or else to join with
“ this House to adjourn to a place of safety; and the House
“ ordered Mr. Glyn, Sir Philip Stapleton, and Mr. Fiennes,
“ to manage this conference.

“ While

“ Whilst these Members were about to go to the Lords
 “ House, Serjeant Francis being come to the door of the
 “ House, having the mace in his hand, sends in word that
 “ he was at the door of that House, and had a command to
 “ deliver a message from his Majesty to Mr. Speaker; where-
 “ upon he was called in to the bar (but without his mace)
 “ and there he delivered this message, viz.

‘ I am commanded by the King’s Majesty, my master,
 ‘ upon my allegiance, that I should come and repair to the
 ‘ House of Commons, where Mr. Speaker is, and there to
 ‘ require of Mr. Speaker five Gentlemen, Members of the
 ‘ House of Commons; and those Gentlemen being delivered,
 ‘ I am commanded to arrest them in his Majesty’s name of
 ‘ high treason: Their names are Denzell Holles, Sir Arthur
 ‘ Haslerig, John Pym, John Hampden, and William
 ‘ Strowd.’

“ After he delivered his message, the House commanded
 “ him to withdraw, and appointed Sir John Culpepper, Lord
 “ Falkland, Sir Philip Stapleton, and Sir John Hotham, to
 “ attend his Majesty, and to acquaint him, That this message
 “ from his Majesty was a matter of great consequence; that
 “ it concerneth the Privilege of Parliament, and therein the
 “ Privilege of the Commons of England: That this House
 “ will take it into serious consideration, and will attend his
 “ Majesty with an answer, in all humility and duty, with as
 “ much speed as the greatness of the business will permit; and
 “ in the mean time the said Members shall be ready to answer
 “ any legal charge made against them.

“ At this time Mr. Speaker, by command of the House,
 “ enjoined

“ enjoined these five Members before named, particularly (one
“ by one) to give their attendance on this House de die in
“ diem, till the House take further order; and further or-
“ dered, that to-morrow morning, at ten of the clock, the
“ House be turned into a Grand Committee, to take into
“ consideration the message sent by Serjeant Francis from the
“ King concerning the said Members.

“ Mr. Glyn reports the conference this day had with the
“ Lords concerning this matter, that the Lords had made an
“ order to open the doors and trunks of the Members of both
“ Houses, which were shut up and sealed; and that they have
“ resolved to join with this House in an humble Petition to
“ the King, to desire that such a guard as himself and both
“ Houses of Parliament shall approve of, may be appointed;
“ and that they have appointed two Lords to attend the King,
“ with a proportionable number of the Members of this
“ House, in this matter.

“ Then the House returned answer to Serjeant Francis
“ (who attended all this while at the door of the House of
“ Commons) That this House will send an answer to his
“ Majesty, to the message the Serjeant brought, by Members
“ of their own: whereupon he returned.

“ The House being informed, that it was Sir William
“ Flemming, Sir William Killigrew, and other Gentlemen,
“ who sealed up the studies and doors of the five Members,
“ ordered that they should be forthwith apprehended by the
“ Serjeant at Arms attending this House, and to remain in
“ the custody of the Serjeant of this House till further
“ order.

“ The Lord Falkland reported the King's answer to the
“ said message, delivered the last night to his Majesty, con-
“ cerning the breach of Privilege of Parliament, in accusing
“ five Members of this House, and sending Serjeant Francis
“ with the mace to seize upon their persons.

“ That at the delivery of this message to the King, his
“ Majesty did ask the Lord Falkland, Whether the House
“ did expect an answer? and before the Lord Falkland made
“ answer, his Majesty said he would send an answer this
“ morning (being the 4th of January) as soon as the House
“ was set; and in the mean time he bid him acquaint the
“ House, that the Serjeant at Arms did nothing but what he
“ had directions from himself to do.

“ After the report of this answer of the King's, the House
“ of Commons presently ordered, That a conference be desired
“ with the Lords, to acquaint them, that there is a scandalous
“ Paper published, containing articles of high treason against
“ the Lord Kimbolton, of the House of Peers: Denzell Holles,
“ Sir Arthur Haslerig, John Pymm, John Hampden, and
“ William Strowd, Members of the House of Commons. And
“ that forasmuch as it being against the Members of both
“ Houses, they do desire the Lords, that right may be done
“ against the publishers of the said scandalous Paper, and to
“ enquire who are the authors and publishers thereof, that
“ they may receive condign punishment, and that the Com-
“ monwealth may be secured against such persons.

“ The gentlemen of the Inns of Court having, upon the
“ apprehensions of tumults, offered themselves to be a guard
“ to his Majesty, and the Parliament understanding there had
“ been

“ been some practices used to bid them be this day in a readi-
“ nefs, sent some of their Members to the four Inns of Court, to
“ enquire into the same, who now made their report; and first
“ Mr. Brown spake and said, That he had done the message
“ enjoined him by this House, to the gentlemen of the society
“ of Lincoln’s Inn, and received this answer, viz. That they
“ had at first gone to the Court this last week, only upon oc-
“ casion of a report brought to them, that the King’s person
“ was in danger. That yesternight they had received a mes-
“ sage from his Majesty by Sir William Killigrew, and Sir
“ William Flemming, that they should keep within this day,
“ and be ready at an hour’s warning, if his Majesty should
“ have occasion to use them. That they brought likewise a
“ paper of articles to them, by which the Lord Mandeville,
“ and five Members of the House of Commons were accused of
“ high treason. That they had only an intent to defend the
“ King’s person, and would do their utmost also to defend the
“ Parliament; being not able to make any distinction between
“ the King and his Parliament: and that they would ever
“ express all true affection to the House of Commons in parti-
“ cular. Mr. Ellis of Gray’s Inn, Mr. Hill of the Inner
“ Temple, and Mr. Smith of the Middle Temple, made the
“ like relation from the gentlemen of those other three socie-
“ ties; only the gentlemen of the Middle Temple sent their
“ answer in writing, by the said Mr. Smith; in which they
“ shewed, that their intention to defend the King’s person was
“ no more than they were bound unto by the oath of allegi-
“ ance: with which several answers from the Inns of Court,
“ the House rested well satisfied.

“ The said five accused Members, this day after dinner, came
“ into the House, and did appear according to the special order

H h

“ and

“ and injunction of the House laid upon them yesterday, to
 “ give their attendance upon the House, *de die in diem*; and
 “ their appearance was entered in the Journal.

“ They were no sooner fate in their places, but the House
 “ was informed by one Captain Langrish, lately an officer in
 “ arms in France, that he came from among the officers and
 “ soldiers at Whitehall, and understanding by them that his
 “ Majesty was coming with a guard of military men, com-
 “ manders, and soldiers, to the House of Commons, he passed
 “ by them with some difficulty to get to the House before them;
 “ and sent in word how near the said officers and soldiers were
 “ come. Whereupon a certain Member of the House*, having
 “ also private intimation from the Countess of Carlisle, sister
 “ to the Earl of Northumberland, that endeavours would be
 “ used this day to apprehend the five Members, the House re-
 “ quired the five Members to depart the House forthwith, to
 “ the end to avoid combustion in the House, if the said soldiers
 “ should use violence, to pull any of them out. To which com-
 “ mand of the House, four of the said Members yielded ready
 “ obedience; but Mr. Strowd was obstinate, till Sir Walter
 “ Earle (his ancient acquaintance) pulled him out by force, the
 “ King being at that time entering into the New Palace Yard,
 “ in Westminster. And as his Majesty came through West-
 “ minster Hall, the commanders, reformadoes, &c. that at-
 “ tended him, made a lane on both sides the hall (through
 “ which his Majesty passed, and came up the stairs to the
 “ House of Commons) and stood before the guard of pen-
 “ sioners and halberteers (who also attended the King’s per-
 “ son): and the door of the House of Commons being thrown

* This Member was Mr. Pymm.—See Sir Philip Warwick’s Memoirs, p. 204.

“ open,

“ open, his Majesty entered the House ; and as he passed up to-
 “ wards the Chair, he cast his eye on the right hand, near
 “ the Bar of the House, where Mr. Pymm used to sit ; but his
 “ Majesty not seeing him there (knowing him well) went up to
 “ the Chair, and said, ‘ By your leave, Mr. Speaker, I must bor-
 “ row your Chair a little :’ whereupon the Speaker came out
 “ of the Chair, and his Majesty stepped up into it. After he had
 “ stood in the chair a while, casting his eye upon the Mem-
 “ bers as they stood up uncovered, but could not discern any
 “ of the five Members to be there ; nor indeed were they easy
 “ to be discerned (had they been there) among so many bare
 “ faces all standing up together ;

“ Then his Majesty made this speech :

‘ Gentlemen,

‘ I am sorry for this occasion of coming unto you. Yesterday I
 ‘ sent a Serjeant at Arms, upon a very important occasion, to appre-
 ‘ hend some that, by my command, were accused of high treason ;
 ‘ whereunto I did expect obedience, and not a message. And I must
 ‘ declare unto you here, that albeit no King that ever was in Eng-
 ‘ land shall be more careful of your Privileges, to maintain them
 ‘ to the uttermost of his power, than I shall be ; yet you must know
 ‘ that, in case of treason, no person hath a Privilege. And there-
 ‘ fore I am come to know if any of these persons, that were accused,
 ‘ are here : for I must tell you, gentlemen, that so long as these
 ‘ persons that I have accused (for no slight crime, but for treason)
 ‘ are here, I cannot expect that this House will be in the right way
 ‘ that I do heartily wish it : therefore I am come to tell you, that I
 ‘ must have them wheresoever I find them. Well, since I see all the
 ‘ birds are flown, I do expect from you, that you shall send them unto
 ‘ me, as soon as they return hither. But I assure you, on the word

‘ of a King, I never did intend any force, but I shall proceed against them in a legal and fair way, for I never meant any other.

‘ And now, since I see I cannot do what I came for, I think this no unfit occasion to repeat what I have said formerly, That whatsoever I have done in favour and to the good of my subjects, I do mean to maintain it.

‘ I will trouble you no more, but tell you I do expect, as soon as they come to the House, you will send them to me; otherwise I must take my own course to find them.’

“ When the King was looking about the House, the Speaker standing below by the Chair, his Majesty asked him, ‘ Whether any of these persons were in the House? Whether he saw any of them? and, Where they were?’ To which the Speaker, falling on his knee, thus answered:

‘ May it please your Majesty,

‘ I have neither eyes to see, nor tongue to speak, in this place, but as the House is pleased to direct me, whose servant I am here; and humbly beg your Majesty’s pardon, that I cannot give any other answer than this, to what your Majesty is pleased to demand of me.’

“ The King having concluded his speech, went out of the House again, which was in great disorder; and many Members cried out aloud, so as he might hear them, *Privilege!* *Privilege!* and forthwith adjourned till the next day, at one of the clock.

“ The same evening his Majesty sent James Maxwell, Usher
“ of

“ of the House of Peers, to the House of Commons, to require
“ Mr. Rushworth, the Clerk Assistant, whom his Majesty had
“ observed to take his speech in characters at the Table in the
“ House, to come to his Majesty; and when Maxwell brought
“ him to the King, his Majesty commanded him to give him a
“ copy of his speech in the House. Mr. Rushworth humbly
“ besought his Majesty (hoping for an excuse) to call to mind
“ how Mr. Francis Nevil, a Yorkshire Member of the House of
“ Commons, was committed to the Tower, but for telling his
“ Majesty what words were spoken in the House by Mr. Henry
“ Bellasis, son to the Lord Faulconbridge; to which his Ma-
“ jesty smartly replied, *‘ I do not ask you to tell me what was
‘ said by any Member of the House, but what I said myself.’*
“ Whereupon he readily gave obedience to his Majesty’s com-
“ mand, and in his Majesty’s presence, in the room called the
“ Jewel House, he transcribed his Majesty’s speech out of his
“ characters, his Majesty staying in the room all the while.
“ And then and there presented the same to the King, which
“ his Majesty was pleased to command to be sent speedily to
“ the press, and the next morning it came forth in print.

“ The Commons sent Mr. Fiennes with a message to the
“ Lords, to give them notice of the King’s coming yesterday,
“ and that they conceived it a high and great breach of Pri-
“ vilege; and to repeat their desires, that their Lordships
“ would join with them in a petition to the King, that the
“ Parliament may have a guard to secure them, as shall be ap-
“ proved of by his Majesty and both Houses; and also to let
“ them know, that they have appointed a Committee to sit
“ at Guildhall, London; and have also appointed the Com-
“ mittee for the Irish affairs to meet there.

“ Then

“ Then falling into further debate about yesterday's transactions, passed the following Order :

Die Mercurii, 5 Januarii,

“ Whereas his Majesty in his royal person, yesterday, being
“ the 4th of January 1641, did come to the House of Com-
“ mons, attended with a great multitude of men armed in a
“ warlike manner, with halberts, swords, and pistols, who
“ came up to the very door of the House, and placed them-
“ selves there, and in other places and passages near to the
“ House, to the great terror and disturbance of the Members
“ thereof then fitting, and, according to their duty, in an or-
“ derly and peaceable manner treating of the great affairs of both
“ kingdoms of England and Ireland ; and his Majesty having
“ placed himself in the Speaker's Chair, did demand the persons
“ of divers Members of the House to be delivered unto him ;

“ It is this day declared by the House of Commons, that
“ the same is a high breach of the Rights and Privileges of
“ Parliament, and inconsistent with the liberty and free-
“ dom thereof ; and therefore this House doth conceive
“ they cannot, with the safety of their own persons, or in-
“ demnity of the Rights and Privileges of Parliament, sit here
“ any longer without a full vindication of so high a breach,
“ and sufficient guard wherein they may confide ; for which
“ both Houses jointly, and this House by itself, have been
“ humble suitors to his Majesty, and cannot yet obtain.

“ Notwithstanding which, this House being very sensible of
“ the greatest trust reposed in them, and especially at this time
“ of the manifold distractions of this kingdom, and the la-
“ mentable and distressed condition of the kingdom of Ireland,

“ doth order that this House shall be adjourned till Tuesday
“ next, at one of the clock in the afternoon, and a Committee
“ be named by this House, and all that will come to have
“ voices, shall sit at the Guildhall in the City of London, to-
“ morrow morning at nine of the clock, and shall have power
“ to consider and resolve of all things that may concern the
“ good and safety of the City and Kingdom, and particularly
“ how our privileges may be vindicated, and our persons se-
“ cured; and to consider of the affairs and relief of Ireland;
“ and shall have power to consult and advise with any person
“ or persons touching the premises; and shall have power to
“ send for parties, witnesses, papers, and records: And it is
“ further ordered, that the Committee for Irish affairs shall
“ meet at the Guildhall aforesaid, at what time they shall
“ think fit, and consult and do touching the affairs of Ireland,
“ according to the power formerly given them by this House;
“ and both the said Committees shall report the results of their
“ consideration and resolution to this House. The names of
“ the Committee do follow, viz.

“ Mr. Chancellor of the Exchequer, Mr. Glyn, Mr. Whit-
“ lock, Lord Falkland, Sir Philip Stapleton, Mr. Nathaniel
“ Fiennes, Sir Ralph Hopton, Sir John Hotham, Sir Walter
“ Earl, Sir Robert Crook, Sir Thomas Walsingham, Sir Sa-
“ muel Roll, Mr. Pierpoint, Mr. Walter Long, Sir Richard
“ Cave, Sir Edward Hungerford, Mr. Grimstone, Sir Christo-
“ pher Wray, Sir Benjamin Rudyard, Sir John Heppisley, Mr.
“ Herbert Price, Sir John Wray, Sir Thomas Barrington, Mr.
“ Wheeler, Sir William Litton: And all that will come are to
“ have voices at this Committee.

“ And then the House adjourned till Tuesday the 11th of
“ January, at one in the afternoon, according to the said order.

“ The

“ The same day his Majesty was also pleased to go into Lon-
 “ don with his usual attendance ; and in his passage some people
 “ did cry out aloud, *Privileges of Parliament ! Privileges of*
 “ *Parliament !* And one Henry Walker, an ironmonger and
 “ pamphlet-writer, threw into his Majesty's coach a paper,
 “ wherein was written, ‘ *To your tents, O Israel !*’ For which
 “ he was committed, and afterward proceeded against at the
 “ Sessions.

“ His Majesty being arrived at Guildhall, and the Common
 “ Council assembled, he made this speech to them :

‘ *Gentlemen,*

‘ *I am come to demand such persons as I have already accused*
 ‘ *of high treason, and do believe are shrouded in the City. I hope*
 ‘ *no good man will keep them from me ; their offences are treason,*
 ‘ *and misdemeanors of an high nature. I desire your loving assistance*
 ‘ *herein, that they may be brought to a legal trial.*

‘ *And whereas there are divers suspicions raised, that I am a*
 ‘ *favourer of the Popish Religion ; I do profess, in the name of a*
 ‘ *King, that I did and ever will, and that to the utmost of my*
 ‘ *power, be a prosecutor of all such as shall any ways oppose the*
 ‘ *laws and statutes of this kingdom, either Papists or Separatists ;*
 ‘ *and not only so, but I will maintain and defend that true Pro-*
 ‘ *testant Religion which my father did profess, and I will continue*
 ‘ *in it during life.*

“ His Majesty was nobly entertained that day in London,
 “ at the house of one of the Sheriffs ; and after dinner returned
 “ to Whitehall without interruption of tumults.”



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